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**FINANCIAL
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**ACCOUNTING
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ANNUAL REVIEW

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Introduction

If the public statements of the SEC Commissioners and staff are to be believed, brace yourself for the coming wave of financial reporting and accounting enforcement matters. The SEC has sent the message loud and clear in 2013: “The SEC is back and better than ever — and that certainly is the case when it comes to pursuing financial reporting and accounting fraud.”¹

The SEC’s emphasis on financial reporting is not unique, of course; pursuing such matters has long been one of the Commission’s core focus areas. Yet in recent years — after the extensive activity in the early 2000s and the Sarbanes-Oxley Act, and a brief resurgence with stock option backdating — news about financial reporting and accounting matters took a back seat to cases concerning the Financial Crisis of 2008, insider trading, FCPA-related matters, and Ponzi schemes of all types. The numbers confirm this: The SEC filed 79 financial reporting cases in 2012, compared to 219 in 2007.² And the agency opened 124 such investigations in 2012, compared to 304 in 2006 and 228 in 2007.³ Last year, though, the SEC proclaimed that this trend was about to end.

Welcome to the inaugural edition of an annual review from Morrison & Foerster. Starting with calendar year 2013, we plan to track and analyze the SEC’s renewed enforcement efforts focusing on public company financial reporting and accounting, as well as the efforts put forth by the PCAOB. Public companies, officers and directors, audit firms, auditors, and securities practitioners alike can turn here for an insightful discussion of the key cases and trends from the year.

In this edition, we first discuss developments within the SEC and its renewed vigor in the financial reporting and accounting arena. Next, we discuss areas on which the SEC has said that it will focus its financial reporting and accounting enforcement efforts. We then analyze the SEC’s cases in 2013, which may best be viewed as a baseline against which future SEC priorities and efforts will be compared. Thereafter, we explore specific themes that emerged from last year’s cases, as applicable to public companies and their officers and directors, as well as to audit firms and auditors. We then discuss the several cases last year that focused on Rule 102(e) bars. Finally, we close with a review of developments at the PCAOB.

We hope that you enjoy the report as much as we enjoyed putting it together. Please let us know your thoughts; we look forward to hearing from you.

Redesigning the SEC's Division of Enforcement, Again

Under the leadership of SEC Chair Mary Jo White and Division of Enforcement Co-Directors George Canellos and Andrew Ceresney, the SEC once again recast its enforcement program in 2013. In Chair White's words, the changes are designed to highlight the agency's "robust" enforcement program that is "aggressive and creative," and that "continue[s] to focus on financial statement and accounting fraud."⁴

Forming a New Task Force

Several years ago, in the wake of criticism concerning the SEC's enforcement efforts, the Division underwent a fundamental reorganization. In an effort to streamline its processes and conduct its investigations more efficiently, the Division flattened its management structure, obtained delegated authority to issue subpoenas, and formed five specialty units, staffed with attorneys and accountants from around the country, to focus on specific enforcement areas: market abuse, asset management, structured and new products, Foreign Corrupt Practices Act (FCPA), and municipal securities. Notably absent from the reshuffling, however, was a unit specifically focusing on financial reporting and accounting matters.

Fast-forward to 2013. Calling accurate financial reporting "the bedrock upon which our markets are based," Ceresney proclaimed that "the importance of pursuing financial fraud cannot be overstated."⁵ He expressed skepticism that a reduction in the number of public company restatements really meant that there was less financial fraud.⁶ The

Division thus will "pivot away" from Financial Crisis cases and instead will dedicate resources to pursuing financial reporting and accounting fraud.⁷

As part of this pivot, the Division announced the creation of the Financial Reporting and Audit Task Force (here, the "Task Force").⁸ Building on prior efforts "to concentrate resources on high-risk areas of the market," the Task Force will be "dedicated to detecting fraudulent or improper financial reporting."⁹ It will identify areas susceptible to inappropriate financial reporting by, among other things, engaging in an ongoing review of financial statement restatements and revisions, analyzing performance trends by industry, and using technology-based tools.¹⁰ It will strive to serve "as an incubator to build accounting fraud cases."¹¹ David Woodcock, Director of the Fort Worth Regional Office, serves as Chair of the Task Force, with Margaret McGuire, Senior Counsel to the Directors, serving as Vice-Chair.¹² Attorneys and accountants from both the headquarters and regional offices staff the Task Force, working closely with the Commission's other Divisions and Offices.¹³ The success of the Task Force, according to Division leadership, "should be judged by the quality, and not the quantity, of our cases."¹⁴

Quants Rule!

In the past few years, the SEC has poured increasing resources into utilizing quantitative analysis to aid enforcement efforts. The Aberrational Performance Inquiry, for example, identifies outliers in reported fund performance, which flags matters for the enforcement staff to pursue. Likewise, analysis of mass trading data obtained from broker-dealers allows the staff to identify

potential insider trading and market abuse matters.

It is not surprising, therefore, that the Division created the Center for Risk and Quantitative Analytics (here, the “Analytics Group”) – headed by Lori Walsh, formerly Deputy Chief of the Office of Market Intelligence – to bolster the Division’s financial reporting and accounting enforcement efforts. This new Analytics Group is designed to serve as “both an analytical hub and source of information about characteristics and patterns indicative of possible fraud or other illegality.”¹⁵

The staff will also build on existing analytical tools such as the SEC’s Accounting Quality Model, which allows the staff to identify outlier attributes in issuer filings as compared to industry peers. Those outliers can then be further investigated for possible improprieties.¹⁶

Whistleblowers Help

The Division will not solely rely on its internal sourcing of cases. Last year, the Division continued to reap the rewards of its whistleblower program, established under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). For providing information that leads to a successful enforcement action involving sanctions of over \$1 million, a whistleblower may receive an award of 10% to 30% of the amount collected by the SEC.

In fiscal year 2013, the SEC’s Office of the Whistleblower received 3,238 tips concerning potential securities law violations, up from 3,001 in fiscal year 2012.¹⁷ In each of the past two fiscal years, tips about “Corporate Disclosures and Financials” were the most prevalent of those received by the SEC (aside from

tips classified as “other”): 17.2% of the 2013 tips (557 tips) and 18.2% of the 2012 tips (547 tips).¹⁸ Driving the numbers home, Task Force chair Woodcock stated that whistleblowers are “hugely important” in the financial reporting and accounting fraud arena, and that the Division is currently investigating cases that it could not have uncovered through analytics alone.¹⁹

Indeed, 2013 was a banner year for the SEC whistleblower program. On September 30, the Commission announced an award of over \$14 million to a whistleblower whose tip led to a successful SEC enforcement action.²⁰ This is the largest award granted under the program to date.²¹ Chair White, touted the whistleblower program as “a tremendously effective force-multiplier” that the Commission expects to use with increasing frequency going forward.²² Large awards like this one, she said, will persuade others to step forward, incentivize companies to treat internal reports “seriously and fairly,” and encourage companies to self-report misconduct to the SEC before whistleblowers do so.²³

Settlements and Trials

Bucking years of precedent, the SEC also adjusted its settlement policy in 2013. Historically the SEC has allowed defendants to neither admit nor deny allegations of wrongdoing when settling enforcement actions. Last year, however, the SEC announced that it will seek admissions of liability under certain broadly-defined circumstances.²⁴ Cases appropriate for potential admissions include matters involving a large number of harmed investors, conduct imposing significant risks on investors, circumstances where admissions will aid investors in future proceedings, and

instances when reciting unambiguous facts will send a clear message to the market.²⁵ The SEC already deployed this approach three times in 2013.²⁶ Although none of these cases involved financial reporting, it is not difficult to envision a significant financial reporting and accounting matter fitting into the criteria articulated by the SEC as being appropriate for an admission. Moreover, the SEC retains its full arsenal of other remedies: disgorgement, a civil penalty, a clawback of executive compensation, a bar on serving as an officer or director of a public company, and a bar on practicing before the Commission under Rule 102(e).

Additionally, this past year the SEC emphasized its trial acumen. Stressing the difficult and complex nature of its cases and the frequent lack of direct evidence of liability, the Commission lauded its trial group and its record.²⁷ Chair White stated that the SEC notched an 80% success rate at trial over the past three years.²⁸ While this statistic may be true, the outcomes have been mixed in recent high-profile cases. For example, the SEC won a verdict of liability against Fabrice Tourre, a former Goldman Sachs employee charged with Financial Crisis-related claims, but lost against Mark Cuban, a Texas businessman charged with insider trading.²⁹

Moreover, in financial reporting and accounting cases, the SEC suffered two publicized trial losses in December. First, a jury in Kansas issued a verdict in favor of the CFO of NIC, Inc. who the SEC accused of concealing over \$1 million in perquisites paid to the company's former CEO.³⁰ Second, a court in California ruled for the former CFO and former CEO of Basin Water, Inc., finding that the SEC failed to prove that the executives

entered into "sham transactions" to boost revenues.³¹

Nevertheless, the SEC continues to spotlight its litigation prowess and, anecdotally, indicates that its settlement posture is becoming much more aggressive. All of this signals that the Division will not shy away from taking appropriate cases to verdict.

Focus Areas: What's Next

Armed with its arsenal of enforcement tools, the Task Force and Division will focus their financial reporting and accounting efforts in several areas.³²

Revenue recognition will "remain a staple of [the] financial fraud caseload."³³ Other performance benchmarks used by companies likewise will be carefully scrutinized. And the staff has emphasized on multiple occasions that the effectiveness of internal corporate controls are of paramount concern.³⁴

Additional areas highlighted in recent public comments and cases include asset valuation; recorded expenses, particularly capitalized expenses; estimated reserves and allowances; accounting in connection with acquisitions; off-balance-sheet financings; alternative tax treatments; MD&A disclosures, particularly looking at possible omissions and the use of non-GAAP measures; related-party transactions; and matters arising from foreign operations, including possible FCPA issues, cash controls, and other accounting and disclosure concerns.

Furthermore, the Task Force may seek information from multiple companies within particular industries, but Woodcock has declined to provide

specifics about these potential “sweeps.”³⁵ Complex and unusual transactions, adjusting entries, and significant end of period activity are unlikely to pass unnoticed as well.

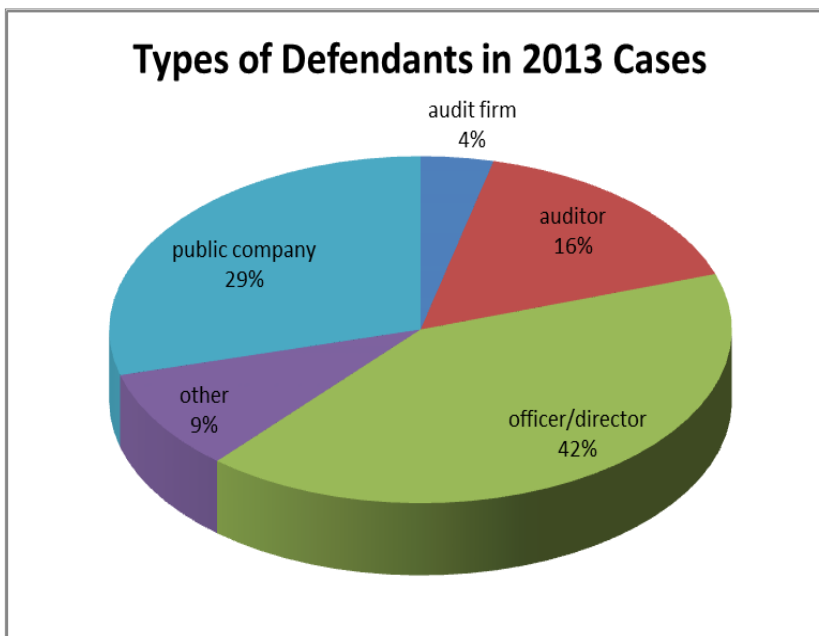
Nor will the Division solely investigate issuers. Through a companion initiative internally dubbed “Operation Broken Gate,” the Division is keenly focused on identifying auditors who do not act in accordance with applicable professional standards.³⁶ As Ceresney stated, when the staff discovers issues, “you can expect that we will scrutinize not only the CEO, CFO and Controller, but also the engagement partner, engagement quality reviewer, and the auditing firm as a whole.”³⁷

Specifically, the Division will seek to ensure appropriate audit planning, identification of risk areas, testing, follow-up on red flags, documentation, and independence. The Division also will probe the activities of other “critical gatekeepers,” such as Audit Committees.³⁸

Finally, lest anyone think that the Division and Task Force will focus solely on mega-cases, Chair White emphasized another enforcement tack that she referred to as the “broken windows” approach.³⁹ That is, the Division will not overlook so-called smaller violations — “such as control failures, negligence-based offenses, and even violations of prophylactic rules with no intent requirement” — in order to show that the SEC cop is walking the beat and to prevent budding violators from blossoming into bigger fraudsters.⁴⁰

Overview of 2013 Cases

The SEC announced 51 new financial reporting and accounting matters involving 106 defendants during calendar year 2013.⁴¹ As illustrated below, the SEC targeted both entities and individuals alike.

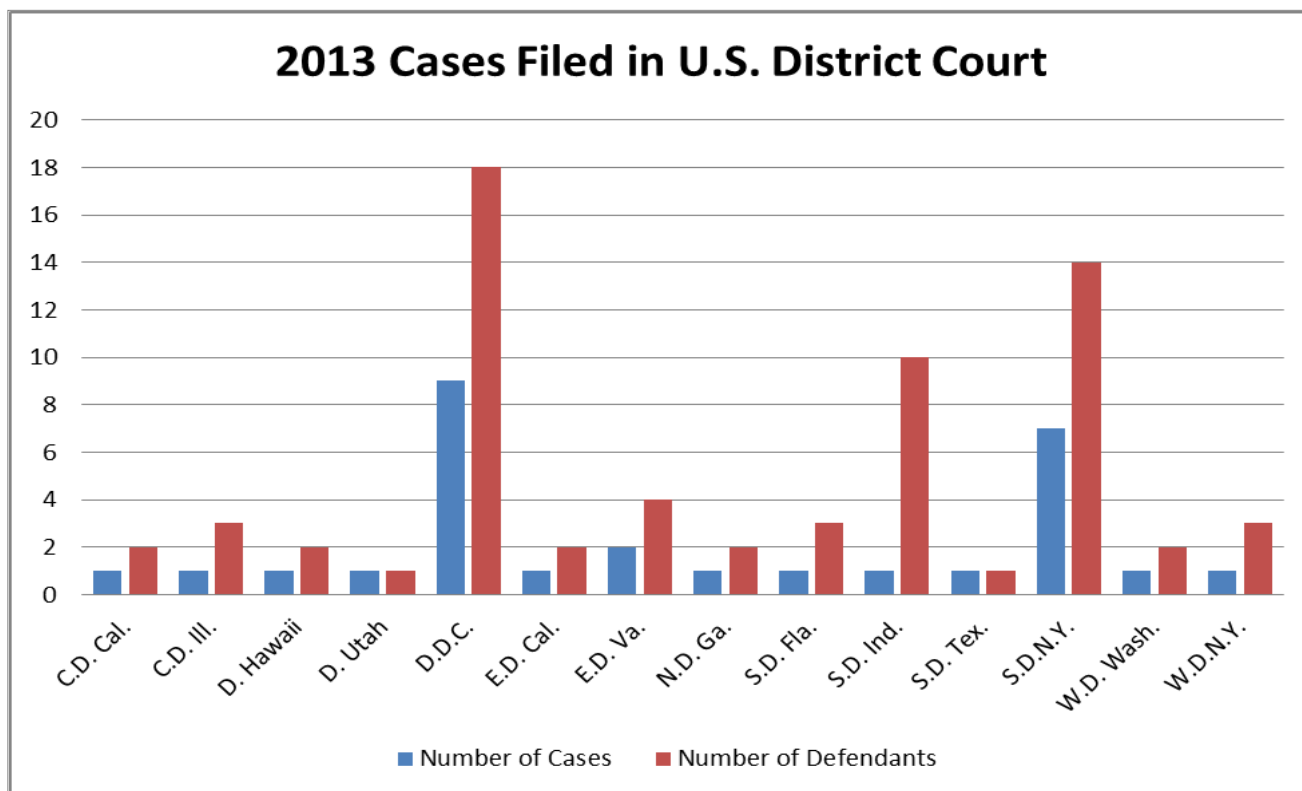
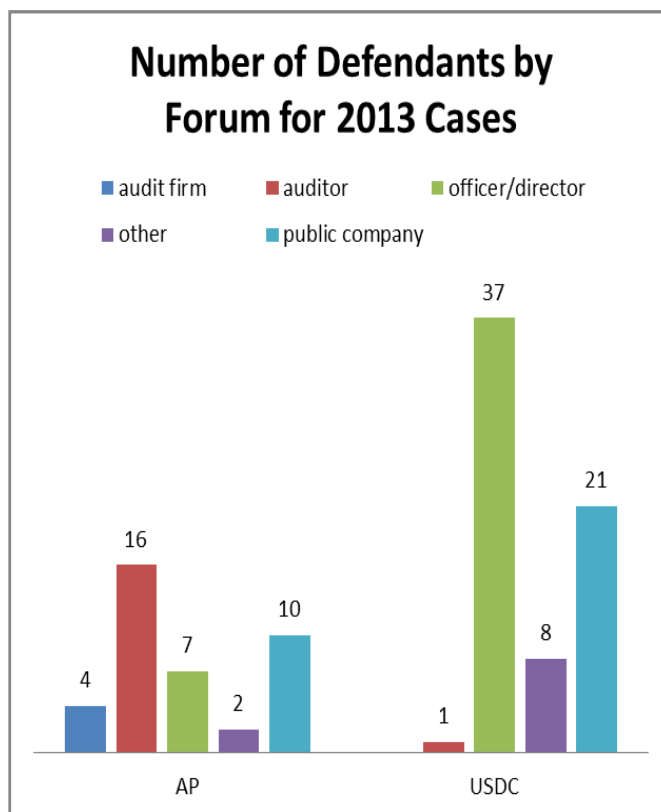


Forums and Venues

Of the new cases filed in 2013, the SEC filed 29 cases in federal district court involving 67 defendants, and initiated 22 new Administrative Proceedings (APs), involving 39 respondents. It also initiated 24 “follow-on” APs, which are instituted after the conclusion of a federal district court action for the purpose of imposing relief such as a bar from practicing before the agency. (Because follow on APs do not typically involve additional substantive charges or allegations, they are not further analyzed in this annual review.)

Consistent with its general practice to date, the SEC most frequently sued public companies and their personnel in the federal courts. In contrast, the SEC most frequently pursued audit firms and auditors in APs. As illustrated in the chart at right, however, this was not an absolute rule.

The SEC's district court enforcement actions spanned the country. Although the agency filed the majority of its federal court cases in the District of Columbia and the Southern District of New York, the SEC also filed in twelve other jurisdictions located throughout the U.S. (See below chart.)



Indeed, the SEC filed its single largest case of 2013, in terms of number of defendants, in the Southern District of Indiana.⁴² In this case, the Commission sued an issuer, its CEO, three former owners of an acquired entity, and five middlemen. The complaint alleged that the defendants falsely claimed to be producing renewable fuel from natural raw products, but in fact they secretly purchased and then resold finished biodiesel.⁴³ The matter evolved into a multiagency effort that included the SEC’s Chicago Regional Office, the DOJ, the EPA, the IRS, the FBI, the U.S. Department of Agriculture, and the Indiana Department of Environmental Management. The DOJ also announced indictments of multiple defendants allegedly associated with the scheme.⁴⁴

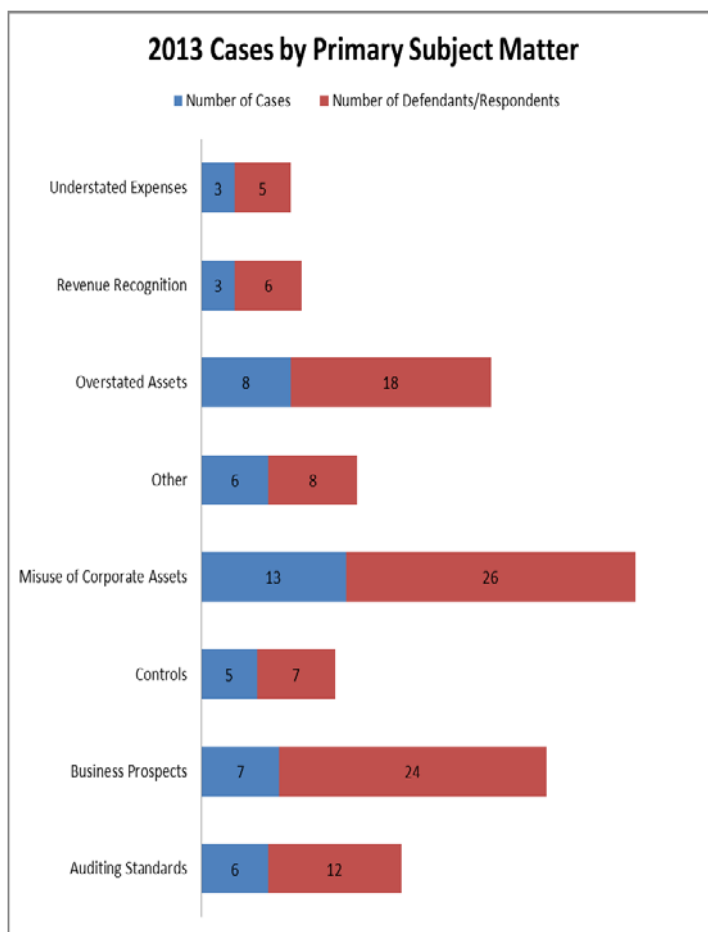
Although the SEC filed over half of its cases in federal district court, recent statements by Task Force chair Woodcock may signal a shift in practice.⁴⁵ Specifically, in September 2013, Woodcock stated that he is a “big proponent” for bringing financial reporting cases as APs rather than filing them in federal district court, and that he expects that, “over the next few years, we will bring more cases” as APs.⁴⁶

Since civil penalties are now allowed in APs under the Dodd-Frank Act, the Division may obtain virtually all of the same substantive relief in an AP as it could in a federal court. APs also proceed more quickly and allow very limited discovery – both advantages to the Division, which has already spent months, if not years, investigating its matters before filing. Plus, many practitioners are concerned that APs provide the Division with at least the appearance of a “home court advantage”

as appeals from AP initial decisions are decided by the Commission that initially authorized bringing the case.

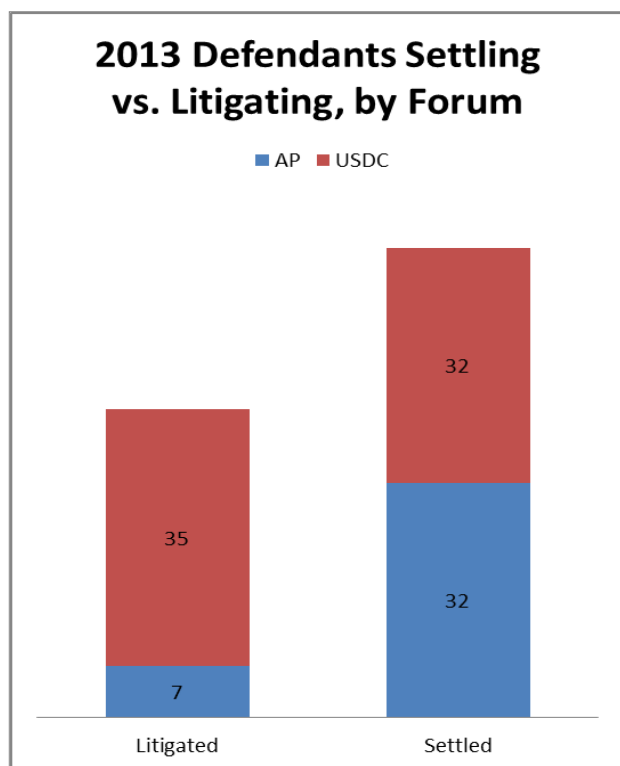
Primary Subject Matters

In its 2013 financial reporting and accounting cases, the SEC alleged violations concerning eight primary categories, as illustrated in the chart below. Although certain cases, of course, could fall into multiple categories, the chart groups the cases based on what appeared to be their primary topic area. Time will tell whether these trends continue apace, or whether future results change in light of the formation and priorities of the Task Force, the Analytics Group, and other enforcement initiatives in this area.



Case Resolutions

Approximately 60% of defendants settled the SEC's charges at the time of filing. The SEC split its settled filings equally between APs and federal court. Only 7% of respondents initially choose to litigate their APs, whereas 33% of defendants initially litigated in federal court. (See chart below.)



These statistics are subject to a variety of interpretations. Possibly, defendants chose to settle rather than try to litigate in an AP where the Division is perceived to hold an advantage. Or perhaps the SEC chose to file more of the settled actions as APs to avoid judicial scrutiny of the settlement. Whatever the cause, the result is that the SEC has more frequently found itself embroiled in contested federal court proceedings on these complex reporting and accounting matters.

The financial reporting and accounting matters that resolved in 2013 (which includes both settled matters newly filed during 2013, as well as orders and settlements announced during 2013 in cases that were filed in prior years) involved an average civil penalty of approximately \$46,000 assessed against individuals and approximately \$8 million assessed against entities. The latter average is skewed, however, by a lone \$200 million civil penalty imposed against an entity in one case.⁴⁷ Omitting that sanction yields an average civil penalty of approximately \$2.2 million imposed against entities in financial reporting and accounting cases resolved during 2013.

Public Company, Officer, and Director Trends

Seven significant trends applicable to public company issuers and their personnel emerged from the SEC's 2013 financial reporting and accounting matters.

(1) The SEC Pursues Individuals

The Commission, along with many other government agencies, has recently received criticism for seemingly failing to pursue individuals in Financial Crisis-related matters. Yet in 2013 financial reporting and accounting cases, over half of the public-company-related defendants (that is, not including individual auditors) were officers, directors, or other individuals associated with implicated entities.⁴⁸

Indeed, Chair White emphasized her strong support for the SEC's continued focus on individuals. She advocated that the Division of Enforcement embrace a paradigm shift, "looking first at the

individual conduct and working out to the entity, rather than starting with the entity as a whole and working in.”⁴⁹

The Supreme Court’s decision in *Janus Capital Group, Inc. v. First Derivative Traders* may limit the universe of individuals subject to primary liability, but the Commission will not shy from charging primary violations when appropriate.⁵⁰ Plus, as we have previously written, the SEC will continue to look for appropriate secondary liability charges to bring as well.⁵¹ Last year, the SEC alleged scienter-based primary charges against individuals approximately 70% of the time, non-scienter-based primary violations approximately 8% of the time, scienter-based secondary charges approximately 14% of the time, and non-scienter-based secondary charges approximately 8% of the time.

Public company-related personnel resolving financial reporting and accounting matters in 2013 were assessed an average civil penalty of approximately \$68,820. Seven public company-related individual defendants received a permanent officer-and-director (O&D) bar, five received a ten-year bar, seven received a five-year bar, and 14 received no bar.

(2) Watch the Corporate Wallet – The SEC Certainly Will

Among its 2013 financial reporting and accounting cases, the SEC most frequently alleged the misuse of corporate assets. Multiple cases from 2013, for example, involved inappropriate related-party transactions, FCPA violations, and inappropriate uses of proceeds gained in stock offerings, all issues frequently on the SEC’s radar.⁵²

Two cases from 2013, however, involved slightly different circumstances.⁵³ Both cases demonstrate that the SEC will scrutinize corporate cash outflows of all kinds.

In one case, the SEC filed settled fraud charges against a China-based jewelry company and its former Chairman of the Board/President/CEO for their alleged failure to disclose cash transfers of approximately \$134 million to unknown entities.⁵⁴ Interestingly, the SEC concedes that the money was purportedly returned to the company, albeit via transfers in varying amounts to different bank accounts. Nevertheless, the SEC alleged that the conduct was illegal because the transfers were unapproved by the Board, inappropriately recorded in the company’s books and records, and undisclosed in the company’s public filings. The company agreed to pay a \$1 million civil penalty while the individual officer/director agreed to a \$150,000 civil penalty and a five-year O&D bar.⁵⁵

In another case, the former CFO of a public company settled fraud and other charges for allegedly allowing corporate funds to be used to pay unapproved travel and entertainment expenses, which resulted in incorrect corporate filings.⁵⁶ The SEC alleged that at least some of the approved expenses were prohibited by company policies and were personal in nature. The CFO agreed to pay a \$60,000 civil penalty, received a five-year O&D bar, and received a five-year Rule 102(e) bar prohibiting him from practicing before the Commission.⁵⁷

(3) Controls, Controls, Controls

As the above cases make clear, sound cash controls are critical. Yet the SEC's focus on internal controls does not stop there. The Commission will scrutinize a company's controls in all areas relating to financial reporting and accounting.

The SEC's settlement with a large financial institution this past year demonstrates the point.⁵⁸ The firm settled violations of the internal controls provisions of the Exchange Act by agreeing to pay a \$200 million civil penalty and acknowledging that its conduct violated the federal securities laws. The SEC's claims center on apparent failures to timely escalate concerns about risks associated with the firm's activities to senior management, and breakdowns in discussions about the risks among various groups within the company. Notably, although the SEC alleges that certain public filings contained misstated results, the SEC brought the action focusing solely on internal controls.⁵⁹

In another case, the SEC settled with a London-based hedge fund adviser and its U.S.-based NYSE-listed holding company for alleged internal control failures that resulted in the overvaluation of assets.⁶⁰ Allegedly, responsibilities were not clearly delineated among employees and pertinent information calling current valuations into question was not provided to the relevant decision-makers. The respondents agreed to pay civil penalties totaling \$750,000, to disgorge over \$8 million in fees and interest, and to retain an independent consultant to recommend new policies and procedures.⁶¹

The SEC's public comments punctuate the takeaway from these cases: Going

forward, the SEC will carefully scrutinize "the adequacy of internal accounting controls as well as evaluations and conclusions about both internal control over financial reporting and disclosure controls and procedures."⁶²

(4) Foreign-Based Companies in the Crosshairs

This past year, 14 financial reporting and accounting cases naming 32 defendants involved foreign-based issuers.⁶³ Defendants in these cases that settled with the SEC during 2013 agreed to pay an average civil penalty of over \$280,000.

The SEC brought scienter-based fraud charges in four of these 2013 matters, alleging that the defendants significantly misstated the nature and prospects of the businesses.⁶⁴ One company allegedly falsely claimed to operate a cloud computing company.⁶⁵ Another company allegedly "massively" overstated its cash balances and falsely claimed relationships with multinational companies, among other things.⁶⁶ A third company allegedly made false statements about an acquisition, including giving false updates about how the acquired business fared.⁶⁷ And the fourth company allegedly obtained bank loans via fictitious transactions.⁶⁸ In the remaining 2013 matters against foreign-based issuers, the SEC alleged misuses of corporate assets, as previously discussed.⁶⁹

The number of foreign-based issuer cases brought in 2013 is significant, and these matters demonstrate the SEC's ability and tenacity to pursue financial reporting and accounting fraud, despite the complications posed by international investigations.

(5) Describe the Business and its Prospects Accurately

In a number of 2013 matters, the SEC focused on allegedly false qualitative and quantitative descriptions about a company's business.

In two separate matters, for example, the SEC alleged that the defendants made misleading statements about the FDA's consideration of their respective company's products.⁷⁰ The SEC sued the company and founder/CEO in one case, and sued the company, the CEO, and the CFO in the other.⁷¹ Other similar cases from 2013 involved alleged misstatements about the amount of gold located at certain mines, customer relationships with multinational corporations, the performance of chicken farms purportedly acquired by the issuer, details about certain agreements for mining properties, the cloud-computing business that the company claimed to operate, and a company's production of biodiesel fuel.⁷²

The SEC also pursued eight defendants in three cases for allegedly misstated revenues. For example, the SEC sued one company and two of its officers for allegedly overstating revenues from software sales.⁷³ In a second case, a video game company CEO/CFO and a purported consultant are both litigating the SEC's claims that the defendants inflated company revenues through sham transactions.⁷⁴ In a third case, the SEC alleged that a company, its President/CEO, and its CFO made repeated false statements about the sales and revenues in order to portray the company as increasingly profitable when actually it was a failing start-up venture.⁷⁵

(6) Ensure Accurate Reserves and Allowances

Multiple cases last year involved reserve and loss allowance calculations. For example, a large financial institution, its Chief Risk Officer, and a Vice President each settled with the SEC — agreeing to pay civil penalties of \$3.5 million, \$85,000, and \$50,000 respectively — for allegedly understating loan losses over two quarters in 2007.⁷⁶ The SEC sued 17 other entities and individuals in eight other cases asserting similar allegations concerning loan losses.⁷⁷

Resolutions of this type of matter during 2013 resulted in an average civil penalty of approximately \$80,000 imposed against individuals. Individual defendants received permanent O&D bars in three instances, a five-year bar in one instance, and no bar in four instances. Entities resolving this type of case in 2013 were assessed an average civil penalty of \$1.46 million, with two banks paying the lion's share (one paying \$6.5 million and the other paying \$3.5 million). The SEC asserted scienter-based charges against the majority of defendants in these cases.

Some of these cases certainly reflect the long tail of the Financial Crisis. The Commission, however, is likely to continue to scrutinize these sorts of "judgment based" calculations going forward, particularly given today's volatile economic conditions.

(7) Acquisitions Provide Fertile Hunting Grounds

Lastly, the SEC will carefully scrutinize accounting issues surrounding acquisitions. Not only might a merger or acquisition provide an opportunity for accounting manipulation, in the SEC's

view, but also acquiring companies may find themselves cleaning up a predecessor's accounting issues.

Two companies became painfully aware of the issue in 2012 and 2013. First, a large U.S. technology company has been publicly embroiled in multiple regulatory investigations relating to accounting at a U.K. software company, which the U.S. company acquired in 2012.⁷⁸ Second, after paying \$800 million to acquire a Hong Kong-based mining machinery company and its Chinese subsidiary in 2012, a large U.S. equipment company was forced to announce an almost \$580 million goodwill impairment charge due to possible accounting issues at the acquired entities.⁷⁹ Although enforcement cases were not filed against either company in 2013, the investigations have been public and expensive.

Audit Firm and Auditor Trends

Three significant trends particularly applicable to audit firms and auditors emerged from the SEC's financial reporting and accounting cases in 2013.

(1) Meet Auditing Standards

In the bulk of its cases against audit firms and auditors last year, the SEC alleged that the respondents failed to satisfy their minimum professional standards. The SEC initiated ten of these cases, all as APs, against three firms and 16 individuals. The Commission views cases against auditors as "part of the agency's ongoing effort to hold gatekeepers accountable for the important roles they play in the securities industry."⁸⁰

The largest such matter (in terms of number of defendants) involved an SEC settlement with an audit firm, three of its partners, and one audit manager, for alleged failures in connection with audits of three China-based issuers.⁸¹ The SEC alleged that the respondents failed to adequately plan their audit, failed to obtain sufficient evidence to support their conclusions, ignored red flags about potential fraud at the issuers, failed to report unlawful acts, undertook insufficient testing procedures, conducted insufficient quality reviews, maintained inadequate workpapers, and failed to communicate with the predecessor auditors.⁸² The firm agreed to pay a \$750,000 civil penalty and is denied the privilege of practicing before the Commission. The partners each agreed to a five-year Rule 102(e) bar, while the manager agreed to a three-year bar.

Other respondents that settled similar cases brought in 2013 received Rule 102(e) bars ranging from one year to permanent.⁸³ The SEC assessed a civil penalty of \$30,000 against one audit firm, but none against individual auditors.⁸⁴

On the assumption that lax audits foster fraud at issuers, the SEC has not hesitated to investigate auditors along with their audit clients. Last year, for example, the SEC settled with Keyuan Petrochemicals and its former CFO for various undisclosed related-party transactions.⁸⁵ In a separate action, the SEC also settled with the company's audit firm and audit partner for their alleged failure to appropriately audit Keyuan's related-party transactions.⁸⁶ Indeed, the auditors were not only charged with failing to conduct appropriate audits, but they also were charged with causing the

company's violations.⁸⁷ The firm and partner received three-year Rule 102(e) bars, and the firm consented to a \$30,000 civil penalty.

(2) Maintain Independence

Last year, the SEC emphasized the importance of auditors' independence from their public company clients. As one SEC staff member recently stated, "[b]eing independent in both fact and appearance is foundational to an audit and necessary to reduce threats to auditor objectivity and to enhance credibility."⁸⁸ The responsibility is shared between the client and the auditor, according to the SEC staff, and independence must be maintained from affiliates as well as from the primary client entity.⁸⁹

During 2013, the SEC filed one stand-alone independence case. The SEC initiated a settled AP against an audit firm and one of its partners because the partner provided Financial and Operations Principals services for certain broker-dealer clients that were also audit clients.⁹⁰ The firm agreed to disgorge \$12,000 in fees and to pay a \$25,000 civil penalty.⁹¹ The partner is prohibited from practicing before the Commission for one year.⁹²

(3) Show Me the Workpapers!

In early 2014, Administrative Law Judge Cameron Elliot issued an initial decision in the SEC's AP instituted in 2012 against the Chinese affiliates of five large U.S. accounting firms.⁹³ The decision censured the entities and denied four of them the privilege of practicing before the Commission for six months.⁹⁴ This is a significant milestone in proceedings that have spanned for well over a year,

and that likely will continue for the foreseeable future.

In mid-2012, the SEC instituted an AP against the Chinese affiliate of an accounting firm for its alleged refusal to produce workpapers related to a China-based company under investigation.⁹⁵ Several months later, the SEC instituted another AP against the Chinese affiliates of four additional large U.S. accounting firms, likewise due to their refusal to produce workpapers and other documents related to China-based companies under investigation.⁹⁶ The audit firms refused to produce the information to the SEC because they claimed that Chinese laws prevented their disclosure. The two APs were ultimately consolidated.

During 2013, the parties to the SEC's AP participated in weeks of hearings, involving approximately 1,000 exhibits, and submitted hundreds of pages of briefing.⁹⁷ After two extensions of time in which to render a decision, the ALJ issued his initial decision on January 22, 2014.⁹⁸ The 112-page opinion provides a detailed recitation of the discussions between the SEC and the audit firms concerning production of the workpapers, as well as the ALJ's conclusions of law and discussion about sanctions.

The initial decision recognized that the AP garnered extensive publicity and sparked discussions between the Commission and the China Securities Regulatory Commission (CSRC).⁹⁹ The press reported that during 2013, due to the discussions, at least some of the firms provided workpapers to the CSRC, which then discussed production with the SEC.¹⁰⁰ In December 2013, the CSRC reportedly agreed to turn over at least

some of the documentation to the SEC.¹⁰¹ Although various sections of the complete initial decision apparently discuss the negotiations between the U.S. and Chinese regulators, the publicly-available copy of the initial decision almost entirely redacts the sections recounting these negotiations, as well as descriptions of expert testimony about applicable Chinese law.

Despite these ongoing negotiations, ALJ Elliot ruled that the auditing firms improperly refused to provide the requested workpapers to the SEC staff.¹⁰² The initial decision flatly rejected the firms' argument that Chinese law prohibited the production. Instead, the ALJ ruled that the firms created the dilemma by choosing to do business in China as registered accounting firms. According to the initial decision, evidence presented during the proceedings indicated that other accounting firms operated in China and produced workpapers without raising the same arguments about Chinese law. ALJ Elliot concluded that he "has little sympathy for Respondents on this issue"; their refusal to cooperate with the SEC's requests "does not demonstrate good faith, indeed, quite the opposite – it demonstrates gall."¹⁰³ The initial decision may be appealed to the Commission and, thereafter, to the federal courts.

Also in mid-2013, the PCAOB entered into a memorandum of understanding with the CSRC. The agreement provides a framework under which each regulator may obtain assistance from the other in gathering information from members.¹⁰⁴ Notably, the agreement does not expressly prohibit the PCAOB from providing information that it obtains to the SEC.

Foreign regulators likewise could pursue auditors to produce workpapers relating to their China-based clients. The Hong Kong Securities & Futures Commission, for example, sued the Hong Kong subsidiary of a large U.S.-based accounting firm for allegedly failing to produce workpapers held by its China-based affiliate.¹⁰⁵ The Court of First Instance concluded its hearings in September 2013 and is expected to rule after deliberations.¹⁰⁶

Time will tell whether the Commission and federal courts will affirm the ALJ's initial decision and require the production of workpapers from China. In addition, the practical effect of the agreement between the PCAOB and the CSRC has yet to be seen. In the meantime, however, auditors with China-based clients are forewarned of potential regulatory action around the globe if they refuse to produce requested workpapers. Moreover, issuers with China-based operations likewise should consider the impact that these matters may have on their ability to issue audited financials in their periodic filings with the SEC.

Rule 102(e) Bars

Last year provided several insights about bars prohibiting respondents from practicing before the Commission under Rule 102(e).

To begin, the Division of Enforcement promised to aggressively pursue Rule 102(e) bars in appropriate cases.¹⁰⁷ According to Ceresney, the Division may seek a bar beyond instances when there are actual accounting irregularities at a public company.¹⁰⁸ Indeed, a bar may be sought when the Division believes that an audit failed to meet basic standards —

even if no problems materialized at the audit client.¹⁰⁹

The Division sought or obtained Rule 102(e) bars in 38 cases involving 49 respondents during 2013. Nineteen of these respondents are individual auditors, four are audit firms, 24 are public company employees, one is an attorney, and one is an accounting firm principal (but not a CPA). Also, seven individuals subject to prior Rule 102(e) bars sought reinstatement during 2013. The Commission granted all of the requests.

Three 2013 matters concern the application of prior Rule 102(e) bars to current activities. In two actions filed in federal court, the SEC alleged that the defendants violated previously-imposed Rule 102(e) bars.¹¹⁰ For example, the defendant in one case, a former public company controller, worked at a professional outsourcing firm where he helped numerous companies with their SEC filings.¹¹¹ The Court found that this defendant violated his bar and ordered him to disgorge the approximately \$400,000 of compensation that he received from his work performed while subject to the bar.¹¹² The second defendant is litigating.¹¹³

In a third matter, a former CFO subject to a five-year bar, sought clarification from the Commission about what positions he could hold during the tenure of his bar.¹¹⁴ Specifically, he inquired whether the bar precluded him from serving on the audit committee of Commission registrant, or as the CFO of public company as long as he was not acting as the company's principal accounting officer. The Commission declined to provide that guidance. It ruled that whether a particular position is prohibited by the

bar requires a “‘fact-specific inquiry’ into the conduct involved when serving in such a position,” but stated that it lacked the factual record to make this determination.¹¹⁵

Moreover, perhaps as a caution to future respondents seeking to test the limits of their bars, the Commission cited precedent propounding a broad view about the scope of a Rule 102(e) bar in light of the “breadth of ways in which accountants can threaten our processes.”¹¹⁶

Developments at the PCAOB

The Public Company Accounting Oversight Board (PCAOB or Board) similarly had an eventful 2013, and likely set the stage for increased activity in the year to come.

Cooperation Credit

In April, the PCAOB issued a policy statement regarding credit for extraordinary cooperation with Board investigations.¹¹⁷ In its policy statement, the Board encouraged firms to provide extraordinary cooperation in order to receive certain credit from the Board during an investigation.

According to the policy statement, three types of cooperation may merit credit: self-reporting; remedial or corrective action; and substantial assistance to the Board's investigative processes or to other law enforcement authorities. The Board expects more than mere compliance with legal and regulatory obligations; it requires voluntary and timely action above and beyond the bare minimum.

Firms providing this sort of extraordinary cooperation may receive benefits,

including reduced charges and sanctions; language in public releases about the cooperation; and/or, in exceptional cases, no disciplinary charges at all. The release cautions that other factors may influence the outcome of investigations as well. For example, the Board may consider the nature and duration of the conduct, prior disciplinary history, a firm's implementation of self-policing procedures, and individuals' role with and responsibility for the conduct in question.

Auditing Concerns and Changes

The PCAOB's investigatory and enforcement priorities parallel the SEC's primary concerns.

First, controls are critical. In October 2013, the Board issued a Staff Audit Practice Alert emphasizing the need for auditors to thoroughly audit companies' internal controls over financial reporting.¹¹⁸ The Board issued the alert due to the significant number of shortcomings in this area observed by the Board staff during the past three years.¹¹⁹ Notable deficiencies included the failure to appropriately identify controls, design effective testing procedures, and obtain sufficient evidence to update the results, as well as over-reliance on the work of others.¹²⁰ The Board staff urged top-level focus on controls planning and auditing procedures by the engagement partner and senior engagement team, as well as by engagement quality reviewers.¹²¹ Moreover, the PCAOB urged Audit Committees to take notice and to discuss controls issues with auditors.

Second, standards matter. The PCAOB periodically conducts inspections of its member firms. In February 2013, the Board reported on certain of these inspections.¹²² Despite some declines in

significant audit performance deficiencies during the focus time period (2007-2010), the Board expressed significant concern about the persistence of deficiencies.¹²³

Audit areas with frequent inspection findings included revenue recognition, fair value measurements, business combinations, impairment of intangible and long-lived assets, accounting estimates, related-party transactions, and procedures to respond to possible material misstatements due to fraud.¹²⁴ Notably, these areas align with the focus areas highlighted by the SEC's Division of Enforcement discussed above.

Third, check the work. In December, the PCAOB released a report discussing the standards relating to engagement quality reviews.¹²⁵ Although the PCAOB found that firms generally tended to have procedures in place, "audit deficiencies and the related deficiencies in engagement quality reviews continued to be high."¹²⁶ The Board urged firms to proactively assess the effectiveness of their own procedures and to implement improvements when appropriate.¹²⁷

Fourth, changes may be coming. In May 2013, the PCAOB announced that it was considering amending the auditing standards relating to a company's significant unusual transactions, including related-party transactions.¹²⁸ The revised procedures would require auditors to undertake additional procedures to identify and evaluate these transactions, although auditors would not need to opine on the reasonableness of the transactions.¹²⁹ The Board is considering comments.

Likewise, in both August and December, the PCAOB proposed amendments to its auditing standards concerning auditing

reports.¹³⁰ In August, the Board solicited comments on a proposal to require auditors' reports to discuss "critical audit matters," to explain the auditors' responsibility for evaluating "other information" beyond the audited financial statements (including procedures required when the auditor identifies a material inconsistency), and to disclose the number of consecutive years that the firm has served as the company's auditor.¹³¹ The PCAOB recognized that a variety of factors influence whether a given issue is a "critical audit matter," yet is balancing this with the view that the additional disclosures would make the reports more informative for investors.¹³² The Board is considering comments.

In December, the Board proposed requiring audit reports to disclose the name of the engagement partner who led the audit in the most recent period, as well as the names, locations, and extent of participation of other public accounting firms and individuals who participated in the audit.¹³³ The proposal concerns disclosure only; it would not change the performance obligations that the auditors must meet.¹³⁴ The five-member Board is divided about these proposals, however. One member expressed "strong reservations" about the proposal while another called it a "solution in search of a problem."¹³⁵ Comments are due by early 2014.

PCAOB Enforcement Overview

In calendar year 2013, the PCAOB announced a total of 17 cases involving 27 respondents (approximately evenly split between firms and individuals).

Announcements in four matters involving six respondents (four firms, two individuals) were adjudicated matters.

Specifically:

- One firm was sanctioned for issuing an audit report before it became registered with the PCAOB.¹³⁶ This firm must pay a \$2,500 civil penalty and its PCAOB registration is suspended for one year.¹³⁷
- A second firm received sanctions for failing to make required annual filings with and fee payments to the PCAOB.¹³⁸ Perhaps due to its failure to answer the charges, the firm's registration was permanently revoked and it must pay a \$5,000 civil penalty.¹³⁹
- A third firm and one of its employees were sanctioned for allegedly creating, altering, and backdating audit documentation.¹⁴⁰ Both respondents defaulted by failing to attend a prehearing conference.¹⁴¹ The firm's PCAOB registration was permanently revoked, while the individual was permanently barred and was assessed a \$50,000 civil penalty.¹⁴²
- In the fourth matter, the SEC affirmed sanctions imposed by the PCAOB on an audit firm and one of its employees in 2012 for purported failures to meet auditing standards when auditing, among other things, revenues, accounts receivable, and accounting for a private placement.¹⁴³ The firm's registration was permanently revoked, and the individual was permanently barred, by the PCAOB.¹⁴⁴

The remaining majority of the PCAOB's 2013 matters consisted of settled orders. In the largest matter, based on number of respondents, an India-based accounting firm and three of its auditors allegedly performed few to no audit procedures, despite claiming to have audited in accordance with the relevant

standards.¹⁴⁵ In connection with an audit, the respondents allegedly failed, among other things, to make inquiries of the prior auditor, as well as to test the balances of cash, bank accounts, accounts receivable, property and equipment, accounts payable, accrued expenses, and accrued employee cost. The firm allegedly lacked internal procedures and monitoring to ensure compliance with the appropriate standards. Additionally, the firm apparently provided internal audit and outsourcing services to the issuer in violation of independence standards.¹⁴⁶ The firm agreed to a \$10,000 civil penalty and a two-year revocation of its registration. The individuals, depending on their level of seniority and involvement, received permanent, three-year, or two-year bars.¹⁴⁷

Five of the PCAOB's other settled orders involved allegedly deficient audit procedures. One matter concerned related-party transactions.¹⁴⁸ Another involved "numerous and repeated" violations concerning audits of revenue recognition, account receivables, and inventory.¹⁴⁹ A third case involved an audit partner for companies based in China and Hong Kong who did not speak Chinese and who failed to undertake sufficient procedures on revenues and goodwill impairment, among other areas.¹⁵⁰ And two cases involved audits by individuals that did not know PCAOB standards, or that used only standardized checklists that were not tailored to the audit client.¹⁵¹ The PCAOB imposed \$10,000 civil penalties against the audit firms in three of the above cases.¹⁵² Bars ranged from two years in one instance, to three years in five instances, and to permanent in three instances.¹⁵³

Additionally, in at least four other cases, the PCAOB sanctioned respondents for failing to cooperate during Board inspections by creating or altering workpapers.¹⁵⁴ Although the PCAOB did not impose civil penalties in these matters, the respondents were barred/had their registration revoked for 18 months, two years, three years, or permanently.¹⁵⁵

Finally, the PCAOB sanctioned a Big Four firm with a \$2 million civil penalty for allegedly permitting a former partner subject to a Board-ordered suspension to become an "associated person."¹⁵⁶ Specifically, the partner held a National Office job overseeing how the firm used specialists in audits, reconsiderations of the firm's audit approach, and other miscellaneous projects. In the course of his duties, the PCAOB alleged that the partner gave advice to audit engagement teams in violation of his suspension. The Board also ordered the firm to undertake remedial actions designed to prevent potential future similar issues.

Conclusion

Having spent 2013 designing the Financial Reporting and Audit Task Force and outlining its priorities and processes, the SEC likely will spend 2014 implementing the program and proving its effectiveness. Likewise, the PCAOB shows all signs of redoubling its enforcement efforts this year. No matter the outcome of those efforts, there can be little doubt that regulators will closely scrutinize financial reporting and accounting issues going forward.

Endnotes

- 1 See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13).
- 2 See *id.*
- 3 See *id.*
- 4 See, e.g., Speech 9/26/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539841202> (last visited 11/26/13).
- 5 See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13).
- 6 See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13).
- 7 See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13).
- 8 See Release No. 2013-121 (7/2/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975> (last visited 11/26/13).
- 9 See Release No. 2013-121 (7/2/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975> (last visited 11/26/13).
- 10 See Release No. 2013-121 (7/2/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975> (last visited 11/26/13).
- 11 See 45 Securities Regulation & Law Report 2206 (11/21/13) at http://news.bna.com/srln/SRLNWB/split_display.asp?fedfid=38332092&vname=srlrnotallissues&fcn=40&wsn=488535000&fn=38332092&split=0 (last visited 11/26/13).
- 12 See Release No. 2013-121 (7/2/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975> (last visited 11/26/13).
- 13 See Release No. 2013-121 (7/2/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975> (last visited 11/26/13).
- 14 See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13).
- 15 See Release No. 2013-121 (7/2/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975> (last visited 11/26/13).
- 16 See Speech (12/13/12) at <https://www.sec.gov/News/Speech/Detail/Speech/1365171491988> (last visited 11/26/13).
- 17 See 2013 Annual Report to Congress on the Dodd-Frank Whistleblower Program at <https://www.sec.gov/about/offices/owb/annual-report-2013.pdf> (last visited 11/26/13).
- 18 See 2013 Annual Report to Congress on the Dodd-Frank Whistleblower Program at <https://www.sec.gov/about/offices/owb/annual-report-2013.pdf> (last visited 11/26/13).
- 19 See Law360, "Expect Renewed SEC Emphasis on Accounting Fraud," 10/4/13 at <http://www.law360.com/articles/478273/expect-renewed-sec-emphasis-on-accounting-fraud> (subscription required, last visited 1/3/14).
- 20 See 2013 Annual Report to Congress on the Dodd-Frank Whistleblower Program at <https://www.sec.gov/about/offices/owb/annual-report-2013.pdf> (last visited 11/26/13).
- 21 See Release 2013-209 (10/1/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539854258> (last visited 10/21/13).
- 22 See Speech (10/9/13) at <http://www.sec.gov/News/Speech/Detail/Speech/1370539872100> (last visited 11/26/13).
- 23 See Speech (10/9/13) at <http://www.sec.gov/News/Speech/Detail/Speech/1370539872100> (last visited 11/26/13).
- 24 See Speech 9/26/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539841202> (last visited 11/26/13).
- 25 See Speech 9/26/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539841202> (last visited 11/26/13).
- 26 See Release No. 2013-159 (8/19/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539780222>; Release No. 2013-187 (9/19/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539819965>; Release No. 2013-266 (12/18/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540521484> (all last visited 12/20/13).
- 27 See, e.g., Speech 11/14/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370540374908>; Speech 10/25/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370540071677> (both last visited 11/26/13).
- 28 See Speech 11/14/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370540374908> (last visited 12/5/13).
- 29 See Release 8/1/13 at <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370539749266> and Release No. 22855 (10/23/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22855.htm> (both last visited 11/26/13).
- 30 See "SEC's Courtroom Cred Slips as Trial Losses Mount," Law360, 12/4/13 at <http://www.law360.com/articles/493461/sec-s-courtroom-cred-slips-as-trial-losses-mount> (subscription required, last visited 12/5/13).
- 31 See *SEC v. Jensen and Tekulve*, C.D. Cal., Case No. CV-11-5316-R, Dec. 10, 2013 at <http://articles.law360.s3.amazonaws.com/0495000/495240/SEC%20v%20Jensen.pdf> and "SEC Loses Fraud Claims Against Water Purifier Co. Execs." Law360, 12/12/13 at http://www.law360.com/securities/articles/495240?nl_pk=48ae06b0-9c49-4021-affl-c4acc84a7a33&utm_source=newsletter&utm_medium=email&utm_campaign=securities (subscription required, both last visited 12/13/13).
- 32 See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13); 45 Securities Regulation & Law Report 1759, 9/18/13 at

- http://news.bna.com/srln/SRLNWB/split_display.dp?fedfid=36647326&vname=srlrnotallissues&wsn=489021000&searchid=21774354&doctypeid=1&type=date&mode=doc&split=0&scm=SRLNWB&pg=0 (last visited 9/23/13).
- ³³ See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13).
- ³⁴ See, e.g., 45 Securities Regulation & Law Report 1759, 9/18/13 at http://news.bna.com/srln/SRLNWB/split_display.dp?fedfid=36647326&vname=srlrnotallissues&wsn=489021000&searchid=21774354&doctypeid=1&type=date&mode=doc&split=0&scm=SRLNWB&pg=0 (last visited 9/23/13).
- ³⁵ See 45 Securities Regulation & Law Report 1758, 9/20/13 at http://news.bna.com/srln/SRLNWB/split_display.dp?fedfid=36647339&vname=srlrnotallissues&wsn=489020500&searchid=21774378&doctypeid=1&type=date&mode=doc&split=0&scm=SRLNWB&pg=0 (last visited 9/23/13).
- ³⁶ See Release No. 2013-207 (9/30/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539850572> (last visited 11/26/13).
- ³⁷ See Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 11/26/13).
- ³⁸ See Speech (10/9/13) at <http://www.sec.gov/News/Speech/Detail/Speech/1370539872100> and Speech 9/19/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (both last visited 11/26/13).
- ³⁹ See Speech (10/9/13) at <http://www.sec.gov/News/Speech/Detail/Speech/1370539872100> (last visited 11/26/13).
- ⁴⁰ See Speech (10/9/13) at <http://www.sec.gov/News/Speech/Detail/Speech/1370539872100> (last visited 11/26/13).
- ⁴¹ Orders issued in previously filed cases are excluded from these counts. Approximately 30 releases in 2013 involved such decisions. These announcements included orders on individuals' requests to again practice before the Commission and Court orders on dispositive motions or the parties' settlement of pending litigation.
- ⁴² See AAER 3485 (9/18/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22800.htm> (last visited 12/3/13).
- ⁴³ See *id.*
- ⁴⁴ See Release 9/18/13 at http://www.justice.gov/usao/ins/press_releases/PressRelease13/EBiofuel.Indy.20130918.pdf (last visited 12/3/13).
- ⁴⁵ See 45 Securities Regulation & Law Report 1758, 9/20/13 at http://news.bna.com/srln/SRLNWB/split_display.dp?fedfid=36647339&vname=srlrnotallissues&wsn=489020500&searchid=21774378&doctypeid=1&type=date&mode=doc&split=0&scm=SRLNWB&pg=0 (last visited 9/23/13).
- ⁴⁶ See 45 Securities Regulation & Law Report 1758, 9/20/13 at http://news.bna.com/srln/SRLNWB/split_display.dp?fedfid=36647339&vname=srlrnotallissues&wsn=489020500&searchid=21774378&doctypeid=1&type=date&mode=doc&split=0&scm=SRLNWB&pg=0 (last visited 9/23/13).
- ⁴⁷ See AAER No. 3490 (9/19/13) at <http://www.sec.gov/litigation/admin/2013/34-70458.pdf> (last visited 12/10/13).
- ⁴⁸ In several instances, the SEC pursued third parties who allegedly assisted a public company's alleged misstatements. See, e.g., AAER No. 3449 (3/22/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22657.htm>; AAER 3485 (9/18/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22800.htm> (all last visited 12/9/13).
- ⁴⁹ See Speech 9/26/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370539841202> (last visited 11/26/13).
- ⁵⁰ See 131 S.Ct. 2296 (2011).
- ⁵¹ See "New Standards for Aiding and Abetting," *Executive Counsel* (Dec. 2012/Jan. 2013) by Brian Neil Hoffman.
- ⁵² See, e.g., AAER No. 3447 (2/28/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22627.htm>; AAER No. 3472 (7/8/13) at <http://www.sec.gov/litigation/admin/2013/34-69945.pdf>; AAER No. 3482 (5/15/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22699.htm>; AAER No. 3463 (6/7/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22719.htm>; AAER No. 3452 (4/5/13) at <http://www.sec.gov/litigation/admin/2013/34-69327.pdf>; AAER No. 3454 (4/16/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22672.htm>; AAER No. 3461 (5/29/13) at <http://www.sec.gov/litigation/admin/2013/34-69654.pdf>; AAER No. 3459 (10/22/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22849.htm>; Release No. 34-70751 (10/24/13) at <http://www.sec.gov/litigation/admin/2013/34-70751.pdf>; Release No. 22880 (11/26/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22880.htm>; AAER 3484 (7/22/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22755.htm>; AAER No. 3494 (9/27/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22823.htm> (all last visited 12/6/13); See also, e.g., Fons, Randall and Brian Neil Hoffman, "What's Old is New Again: Total Settles FCPA Charges Involving Decade-Old Conduct," Morrison & Foerster LLP Client Alert, May 31, 2013 at <http://www.mofo.com/files/Uploads/Images/130531-Total-Settles-FCPA-Charges.pdf> (last visited 12/19/13).
- ⁵³ See AAER No. 3483 (7/1/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22739.htm>; AAER No. 3471 (7/2/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22739.htm>

- [41.htm](#) (see also AAER No. 3473) (both last visited 12/6/13).
- ⁵⁴ AAER No. 3483 (7/1/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22739.htm> (last visited 12/6/13).
- ⁵⁵ See *id.*
- ⁵⁶ See Release AAER No. 3471 (7/2/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22741.htm> and No. 3473 (7/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70074.pdf> (both last visited 12/8/13).
- ⁵⁷ See *id.*
- ⁵⁸ See AAER No. 3490 (9/19/13) at <http://www.sec.gov/litigation/admin/2013/34-70458.pdf> (last visited 12/10/13).
- ⁵⁹ See *id.*
- ⁶⁰ See AAER 3516 (12/12/13) at <http://www.sec.gov/litigation/admin/2013/34-71050.pdf> (last visited 12/12/13).
- ⁶¹ See *id.*; See also AAER 3462 (6/3/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22711.htm> (last visited 12/16/13) (company allegedly lacked sufficient controls to identify and accurately report declines in certain business areas).
- ⁶² See Speech 12/9/13 at <http://www.sec.gov/News/Speech/Detail/Speech/1370540472057> (last visited 12/10/13).
- ⁶³ In 2013, the SEC also resolved claims asserted against four defendants in 2012 that likewise involved foreign-based issuers.
- ⁶⁴ See AAER No. 3458 (5/8/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22698.htm>; AAER No. 3479 (6/20/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22731.htm>; Lit. Rel. No. 222848 (10/18/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22848.htm> (all last visited 12/8/13).
- ⁶⁵ See AAER No. 3458 (5/8/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22698.htm> (last visited 12/8/13).
- ⁶⁶ See AAER No. 3479 (6/20/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22731.htm> (last visited 12/8/13).
- ⁶⁷ See Lit. Rel. No. 222848 (10/18/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22848.htm> (last visited 12/8/13).
- ⁶⁸ See AAER No. 3504 (9/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70579.pdf> (last visited 12/9/13).
- ⁶⁹ See AAER No. 3447 (2/28/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22627.htm>; AAER No. 3452 (4/5/13) at <http://www.sec.gov/litigation/admin/2013/34-69327.pdf>; AAER No. 3482 (5/15/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22699.htm>; AAER No. 3461 (5/29/13) at <http://www.sec.gov/litigation/admin/2013/34-69654.pdf>; AAER No. 3483 (7/1/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22739.htm>; AAER No. 3472 (7/8/13) at <http://www.sec.gov/litigation/admin/2013/34-69945.pdf>; AAER 3484 (7/22/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22755.htm>; AAER No. 3494 (9/27/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22823.htm> (all last visited 12/6/13).
- ⁷⁰ See Lit. Rel. No. 22733 (6/26/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22733.htm>; AAER No. 3486 (9/18/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22801.htm> (both last visited 12/9/13).
- ⁷¹ See *id.*
- ⁷² See Lit. Rel. No. 22585 (1/3/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22585.htm>; AAER No. 3458 (5/8/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22698.htm>; AAER No. 3479 (1/20/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22731.htm>; Lit. Rel. No. 22848 (10/18/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22848.htm>; Lit. Rel. No. 22878 (11/25/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22878.htm>; AAER No. 3485 (9/18/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22800.htm> (all last visited 12/9/13).
- ⁷³ See AAER No. 3439 (1/11/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22589.htm> (last visited 12/9/13).
- ⁷⁴ See AAER No. 3492 (9/25/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22813.htm> (last visited 12/9/13).
- ⁷⁵ See Lit. Rel. No. 22816 (9/26/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22816.htm> (last visited 12/18/13).
- ⁷⁶ See Rel. AAER No. 3456 (4/24/13) at <http://www.sec.gov/litigation/admin/2013/34-69442.pdf> (last visited 12/5/13).
- ⁷⁷ See AAER No. 3475 (8/14/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22778.htm>; AAER No. 3437 (1/9/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22587.htm>; AAER No. 3462 (6/3/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22711.htm>; AAER No. 3493 (9/26/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22817.htm>; AAER No. 3476 (8/14/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22779.htm>; AAER No. 3477 (8/22/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22786.htm>; AAER-3478 (9/11/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22796.htm>; AAER No. 3514 (12/4/13) at <http://www.sec.gov/litigation/admin/2013/33-9490.pdf> (all last visited 12/6/13).
- ⁷⁸ See Release (11/20/12) at <http://www8.hp.com/us/en/hp-news/press-release.html?id=1334263>.
- ⁷⁹ See Release (1/18/13) at <http://www.caterpillar.com/cda/layout?m=393518&x=7&id=4326216>.
- ⁸⁰ See Release No. 2013-207 (9/30/13) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539850572> (last visited 12/10/13).

- ⁸¹ See AAER No. 3512 (11/6/13) at <http://www.sec.gov/litigation/admin/2013/34-70823.pdf> (last visited 12/10/13).
- ⁸² See *id.*
- ⁸³ See AAER No. 3503 (9/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70567.pdf>; AAER No. 3501 (9/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70564.pdf>; AAER No. 3500 (9/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70562.pdf>; AAER No. 3488 (9/18/13) at <http://www.sec.gov/litigation/admin/2013/34-70449.pdf>; AAER No. 3451 (4/4/13) at <http://www.sec.gov/litigation/admin/2013/34-69306.pdf> (all last visited 12/10/13).
- ⁸⁴ See AAER No. 3500 (9/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70562.pdf> (last visited 12/10/13).
- ⁸⁵ See AAER 3447 (2/28/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22627.htm> (last visited 12/10/13).
- ⁸⁶ AAER No. 3500 (9/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70562.pdf> (last visited 12/10/13).
- ⁸⁷ AAER No. 3500 (9/30/13) at <http://www.sec.gov/litigation/admin/2013/34-70562.pdf> (last visited 12/10/13).
- ⁸⁸ See Speech (12/9/13) at <http://www.sec.gov/News/Speech/Detail/Speech/1370540472057> (last visited 12/10/13).
- ⁸⁹ See *id.*
- ⁹⁰ See AAER 3464 (6/14/13) at <http://www.sec.gov/litigation/admin/2013/34-69765.pdf> (last visited 12/12/13).
- ⁹¹ See *id.*
- ⁹² See *id.*
- ⁹³ See Initial Decision (1/22/14) at <http://www.sec.gov/alj/aljdec/2014/id553ce.pdf> (last visited 1/22/14).
- ⁹⁴ See *id.* (One entity was censured only because it was no longer doing business in the field).
- ⁹⁵ See *id.*; see also Release No. 2012-87 (5/9/12) at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171488960> (last visited 12/12/13).
- ⁹⁶ See Initial Decision (1/22/14) at <http://www.sec.gov/alj/aljdec/2014/id553ce.pdf> (last visited 1/22/14); AAER No. 3426 (12/3/12) at <http://www.sec.gov/litigation/admin/2012/34-68335.pdf> (last visited 12/12/13).
- ⁹⁷ See *id.*; Initial Decision (1/22/14) at <http://www.sec.gov/alj/aljdec/2014/id553ce.pdf> (last visited 1/22/14).
- ⁹⁸ See Release No. 69094 (3/8/13) at <http://www.sec.gov/litigation/admin/2013/34-69094.pdf>; Release No. 70603 (10/2/13) at <http://www.sec.gov/litigation/opinions/2013/34-70603.pdf> (last visited 12/12/13); Initial Decision (1/22/14) at <http://www.sec.gov/alj/aljdec/2014/id553ce.pdf> (last visited 1/22/14).
- ⁹⁹ See Initial Decision (1/22/14) at <http://www.sec.gov/alj/aljdec/2014/id553ce.pdf> (last visited 1/22/14); see also, e.g., Release No. 69094 (3/8/13) at <http://www.sec.gov/litigation/admin/2013/34-69094.pdf> (last visited 12/12/13).
- ¹⁰⁰ See *Wall Street Journal* article (12/15/13) at <http://online.wsj.com/news/articles/SB40001424052702304477704579256282180428714> (last visited 12/30/13).
- ¹⁰¹ See *Wall Street Journal* article (12/15/13) at <http://online.wsj.com/news/articles/SB40001424052702304477704579256282180428714> (last visited 12/30/13).
- ¹⁰² See Initial Decision (1/22/14) at <http://www.sec.gov/alj/aljdec/2014/id553ce.pdf> (last visited 1/22/14).
- ¹⁰³ See Initial Decision (1/22/14) at <http://www.sec.gov/alj/aljdec/2014/id553ce.pdf> (last visited 1/22/14).
- ¹⁰⁴ See http://pcaobus.org/International/Documents/MOU_China.pdf (last visited 12/15/13).
- ¹⁰⁵ See Release (8/27/12) at <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=12PR92> (last visited 12/15/13).
- ¹⁰⁶ See article (9/12/13), Bloomberg, <http://www.bloomberg.com/news/2013-09-12/ernst-young-ignored-china-papers-request-court-told.html> (last visited 12/15/13).
- ¹⁰⁷ See Speech (9/19/13) at <http://www.sec.gov/News/Speech/Detail/Speech/1370539845772> (last visited 12/15/13).
- ¹⁰⁸ See *id.*
- ¹⁰⁹ See *id.*
- ¹¹⁰ See AAER 3474 (8/8/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22773.htm>; AAER 3513 (11/21/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22875.htm> (both last visited 12/15/13).
- ¹¹¹ See AAER 3474 (8/8/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22773.htm> (last visited 12/15/13).
- ¹¹² See AAER 3517 (12/12/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22887.htm> (last visited 12/15/13).
- ¹¹³ See AAER 3513 (11/21/13) at <http://www.sec.gov/litigation/litreleases/2013/lr22875.htm> (last visited 12/15/13).
- ¹¹⁴ See AAER 3470 (7/2/13) at <http://www.sec.gov/litigation/opinions/2013/34-69922.pdf> (last visited 12/15/13).
- ¹¹⁵ See *id.*
- ¹¹⁶ See *id.*
- ¹¹⁷ See http://pcaobus.org/Enforcement/Documents/Release_2013_003.pdf (last visited 12/15/13).
- ¹¹⁸ See Release (10/24/13) at http://pcaobus.org/News/Releases/Pages/10242013_Practice_Alert.aspx (last visited 12/16/13).
- ¹¹⁹ See *id.*
- ¹²⁰ See *id.*
- ¹²¹ See *id.*

¹²² See Release (2/25/13) at http://pcaobus.org/News/Releases/Pages/02252013_4010.aspx (last visited 12/16/13).

¹²³ See *id.*

¹²⁴ See *id.*

¹²⁵ See Release (12/6/13) at http://pcaobus.org/News/Releases/Pages/12062013_EQR.aspx (last visited 12/16/13).

¹²⁶ See *id.*

¹²⁷ See *id.*

¹²⁸ See Release (5/7/13) at http://pcaobus.org/News/Releases/Pages/05072013_RelatedParties.aspx (last visited 12/16/13).

¹²⁹ See *id.*

¹³⁰ See Release (8/13/13) at http://pcaobus.org/News/Releases/Pages/08132013_OpenMeeting.aspx; Release (12/4/13) at http://pcaobus.org/News/Releases/Pages/12042013_Transparency.aspx (both last visited 12/16/13).

¹³¹ See Release (8/13/13) at http://pcaobus.org/News/Releases/Pages/08132013_OpenMeeting.aspx (last visited 12/16/13).

¹³² See *id.*

¹³³ See Release (12/4/13) at http://pcaobus.org/News/Releases/Pages/12042013_Transparency.aspx (last visited 12/16/13).

¹³⁴ See *id.*

¹³⁵ See Speech (12/4/13) at http://pcaobus.org/News/Speech/Pages/12042013_Hanson_Transparency.aspx; Speech (12/4/13) at http://pcaobus.org/News/Speech/Pages/12042013_Franzel_Transparency.aspx (both last visited 12/16/13).

¹³⁶ See PCAOB File No. 105-2012-006 (Notice of Finality of Initial Decision, 5/7/13) at http://pcaobus.org/Enforcement/Adjudicated/Documents/Eric_C_Yartz.pdf (last visited 12/16/13).

¹³⁷ See *id.*

¹³⁸ See PCAOB File No. 105-2012-007 (Notice of Finality of Initial Decision, 5/7/13) at http://pcaobus.org/Enforcement/Adjudicated/Documents/Kenneth_J_McBride.pdf (last visited 12/16/13).

¹³⁹ See *id.*

¹⁴⁰ See PCAOB File No. 105-2012-001 (Notice of Finality of Initial Decision, 6/19/13) at <http://pcaobus.org/Enforcement/Adjudicated/Documents/Lee.pdf> (last visited 12/16/13).

¹⁴¹ See *id.*

¹⁴² See *id.*

¹⁴³ See Release No. 69976 (7/11/13) at http://pcaobus.org/Enforcement/Adjudicated/Documents/Hatfield_SEC_69976.pdf; PCAOB File No. 105-2009-003 (Final Decision, 2/8/12) at http://pcaobus.org/Enforcement/Adjudicated/Documents/S.W._Hatfield.pdf (both last visited 12/16/13).

¹⁴⁴ See *id.*

¹⁴⁵ See PCAOB Release No. 105-2013-002 (4/24/13) at http://pcaobus.org/Enforcement/Decisions/Documents/04242013_Parikh.pdf (last visited 12/16/13).

¹⁴⁶ See *id.*

¹⁴⁷ See *id.*

¹⁴⁸ See PCAOB Release No. 105-2013-003 (5/14/13) at http://pcaobus.org/Enforcement/Decisions/Documents/05142013_Cronin.pdf (last visited 12/16/13).

¹⁴⁹ See Release PCAOB Release No. 105-2013-006 (8/13/13) at http://pcaobus.org/Enforcement/Decisions/Documents/08132013_Lake.pdf (last visited 12/16/13).

¹⁵⁰ See PCAOB Release No. 105-2013-010 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Acquavella.pdf (last visited 12/16/13).

¹⁵¹ See PCAOB Release No. 105-2013-012 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Hood.pdf; PCAOB Release No. 105-2013-009 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Rattray.pdf (last visited 12/16/13).

¹⁵² See PCAOB Release No. 105-2013-003 (5/14/13) at http://pcaobus.org/Enforcement/Decisions/Documents/05142013_Cronin.pdf; PCAOB Release No. 105-2013-010 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Acquavella.pdf; PCAOB Release No. 105-2013-012 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Hood.pdf (last visited 12/16/13).

¹⁵³ See PCAOB Release No. 105-2013-003 (5/14/13) at http://pcaobus.org/Enforcement/Decisions/Documents/05142013_Cronin.pdf; PCAOB Release No. 105-2013-010 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Acquavella.pdf; PCAOB Release No. 105-2013-012 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Hood.pdf; Release PCAOB Release No. 105-2013-006 (8/13/13) at http://pcaobus.org/Enforcement/Decisions/Documents/08132013_Lake.pdf; PCAOB Release No. 105-2013-009 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/11212013_Rattray.pdf (last visited 12/16/13).

¹⁵⁴ See PCAOB Release No. 105-2013-004 (5/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/05212013_Saeed.pdf; PCAOB Release No. 105-2013-005 (6/27/13) at http://pcaobus.org/Enforcement/Decisions/Documents/06272013_Gruber.pdf; PCAOB Release No. 105-2013-007 (9/10/13) at http://pcaobus.org/Enforcement/Decisions/Documents/09102013_Suddeth.pdf; PCAOB Release No. 105-2013-011 (11/21/13) at http://pcaobus.org/Enforcement/Decisions/Documents/20131121_Svoboda.pdf (last visited 12/16/13).

¹⁵⁵ See *id.*

¹⁵⁶ See PCAOB Release No. 105-2013-008 (10/22/13) at http://pcaobus.org/Enforcement/Decisions/Documents/10222013_Deloitte.pdf (last visited 12/16/13).

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