Floyd Advisory

BUSINESS CONSULTANTS | FORENSIC ACCOUNTANTS

Summary of Accounting and Auditing Enforcement Releases for the Quarter Ended June 30, 2013

Q2 REPORT 2013

CONTENTS

Introduction and Our Objective

We are pleased to present you with our summary of the U.S. Securities and Exchange Commission, Division of Enforcement's Accounting and Auditing Enforcement Releases ("AAERs") for the quarter ended June 30, 2013.

As an independent business advisory and forensic accounting firm, we are committed to contributing thought leadership and relevant research regarding financial reporting matters that will assist our clients in today's fast paced and demanding market. This report is just one example of how we intend to fulfill this commitment.

The Division of Enforcement at the U.S. Securities and Exchange Commission ("SEC") is a law enforcement agency established to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As such, the actions they take and releases they issue provide very useful interpretations and applications of the securities laws.

For those involved in financial reporting, SEC releases concerning civil litigation and administrative actions that are identified as "accounting and auditing" related are of particular importance. Our objective is to summarize and report on the major items disclosed in the AAERs, while also providing useful insights that the readers of our report will find valuable.

We welcome your comments and feedback, especially any additional analysis you would find helpful.

Floyd Advisory
JULY 2013

Our Process and Methodology

The SEC identifies and discloses accounting and auditing related enforcement actions from within its population of civil lawsuits brought in federal court, and its notices and orders concerning the institution and/or settlement of administrative proceedings as Accounting and Auditing Enforcement Releases ("AAERs"). Importantly, the disclosed AAERs are intended to highlight certain actions and are not meant to be a complete and exhaustive compilation of all of the actions that may fit into the definition above.

To meet our objective of summarizing the major items reported in the AAERs, we reviewed those releases identified and disclosed by the SEC on its website, www.sec.gov.

As part of our review, we gathered information and key facts, identified common attributes, noted trends, and observed material events. Applying our professional judgment, which is based solely on information provided by SEC, we sorted the releases into major categories (e.g., Rule 102(e) Actions, Financial Reporting Frauds, Foreign Corrupt Practices Act violations ("FCPA"), Violations of Books and Records, Reinstatements to Appear and Practice before the SEC and Other) and classifications of the financial reporting issues involved (e.g., Improper Revenue Recognition, Manipulation of Reserves, Intentional Misstatement of Expenses, Balance Sheet Manipulation, Options Backdating and Defalcations). Do note, when a release included more than one allegation, admission or violation, we placed the release into the category which represented the most significant issue. For our summary of financial reporting issues, we recorded each accounting problem identified as a separate item. Based on this process and methodology, we prepared a database of the key facts in each release.

REVIEW PROCESS

- Gathered information and key facts
- Identified common attributes
- Noted trends
- Observed material events
- Sorted the releases into major categories
- Prepared a database of the key facts

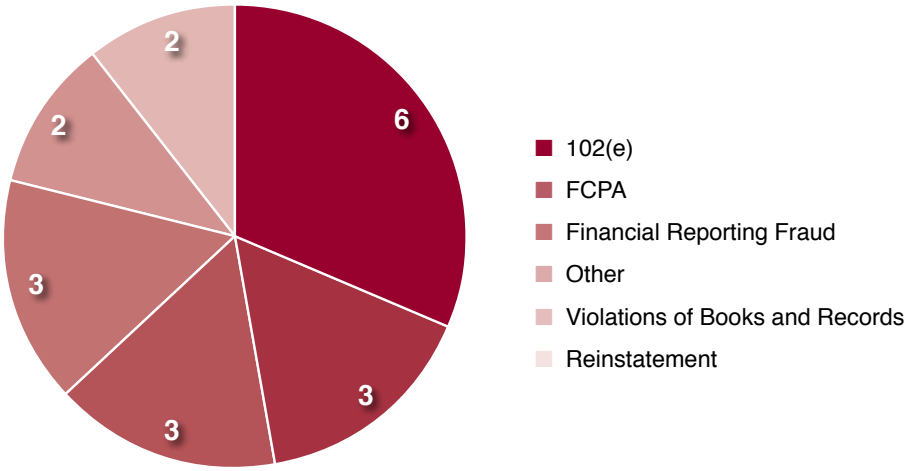
The Q2 2013 AAERs: Summary by Category and Insights from the Releases

AAERs reported by Category for Quarter Ended June 30, 2013:

19

The SEC disclosed nineteen AAERs during Q2 2013 which we have sorted into the following categories as shown in the pie chart.

Q2 2013 AAERs by Category



While the categorical breakdown is analytically useful, a closer look into each category provides a clearer understanding of the SEC's actions.

Rule 102(e) Actions

As reflected in the chart, Rule 102(e) actions accounted for over 30% percent of the releases issued in Q2 2013. Rule 102(e) actions involve the censure and denial, temporarily or permanently, of the privilege of appearing or practicing before the SEC. For accountants, the standards under which one may be penalized with a Rule 102(e) action include reckless as well as negligent conduct, defined as a single instance of highly unreasonable conduct that violates professional standards or repeated instances of unreasonable conduct resulting in a violation of professional standards and indicating a lack of competence.

Examples of the types of actions reported in this quarter's Rule 102(e) releases include:

- ***A California certified public accountant ("CPA") who operated as a sole practitioner was suspended from appearing or practicing before the SEC related to the failed audits of financial statements for a company with stock traded over-the-counter on the pink sheets.***

The company marketed proprietary asthma disease management programs, focusing on allergy testing and diagnostic techniques by primary care physicians. The CPA performed audits for the fiscal year ended May 31, 1993 through the fiscal year ended May 31, 1999. According to the SEC's complaint, during the period of the CPA's audits, the company's former president, chief executive officer ("CEO"), and chairman of the board, and two of its directors engaged in a fraudulent marketing scheme in which they issued false press releases, fraudulently inflated company's assets, disseminated misleading information in SEC filings by omitting the auditor's going concern opinion and failed to disclose significant stock-based executive compensation and related party transactions. The complaint further alleged that the CPA aided and abetted the fraud by improperly recording a material asset on the company's balance sheet, by failing to review the company's Forms 10-K before or after it was filed with the SEC, and by failing to conduct her audit of the company's financial statements in accordance with generally accepted auditing standards.

- ***A CPA who was the former chief financial officer ("CFO") and CEO of a Massachusetts-based information technology company was found guilty after a jury trial and was sentenced on 28 criminal charges including securities fraud, making false statements to company auditors, and making false statements and false certifications in SEC filings.*** The CPA was sentenced to 60 months incarceration to be followed by three years of supervised release, along with payment of restitution to be determined at a later hearing.

- ***Two former CFOs of a database marketing company were suspended from appearing or practicing before the SEC due to allegedly making false filings to the SEC.*** The SEC alleged that the former CFOs signed and certified false Forms 10-K and proxy statements that materially understated and failed to properly disclose the perquisite compensation of the company's former CEO and Chairman of the Board of Directors, and also failed to properly disclose related party transactions involving the former CEO. The complaint alleged that from 2003 through 2007, the former CEO used the company to pay for his personal expenses associated with private jet flights, a yacht, homes, automobiles, credit card expenses, country club memberships, and life insurance policies. According to the SEC, the former CFOs approved the payment of the former CEO's personal expenses and signed and certified the company's false Forms 10-K for 2003 and 2004, which incorporated information from the company's proxy statements. The complaint also alleged that the former CFOs aided and abetted the filing of the company's false Form 10-K for 2005 which incorporated information from the proxy statements.

- ***The vice president, principal accounting officer, and controller of a California pharmaceutical development company was charged with insider trading related to providing a friend with non-public information regarding a drug development announcement before the information was made public.*** As part of a court entered consent final judgment, the individual, also a CPA, was ordered to pay a civil penalty of $616,000, an amount equal to the profits from the alleged insider trading transactions, and was given a five year bar from serving as an officer or director of any issuer of registered securities.

Rule 102(e) actions accounted for over 30% percent of the releases issued in Q2 2013. Rule 102(e) actions involve the censure and denial, temporarily or permanently, of the privilege of appearing or practicing before the SEC.

FCPA Violations

Examples of actions related to Foreign Corrupt Practices Act ("FCPA") described in the Q2 2013 releases include:

- ***A Netherlands-based parent of an affiliation of companies that manufacture and supply goods and services related to healthcare, consumer lifestyle and lighting business sectors (collectively referred to as "Manufacturer"), settled a matter with the SEC involving improper payments made by employees of Manufacturer's Polish subsidiary.*** Since at least 1999, Manufacturer had participated in public tenders to sell medical equipment to Polish healthcare facilities. From 1999 through 2007, in at least 30 transactions, employees of Manufacturer's Polish subsidiary allegedly made improper payments to public officials of Polish healthcare facilities to increase the likelihood that public tenders for the sale of medical equipment would be awarded to the Manufacturer.

  The improper payments made by employees of Manufacturer's Polish subsidiary to Polish healthcare officials were falsely characterized and accounted for in its books and records as legitimate expenses. At times those expenses were supported by false documentation created by Manufacturer's Polish subsidiary employees and/or third parties. The Polish subsidiary's financial statements are consolidated into Manufacturers' books and records.

  Manufacturer has undertaken remedial steps including changes to internal controls, establishing strict due diligence procedures related to the retention of third parties, formalizing and centralizing its contract administration system, enhancing its contract review process and establishing a broad-based verification process related to contract payments. In addition, Manufacturer has made significant revisions to its global business principles policies and continually revises the policies to keep them current and relevant. Manufacturer also established and enhanced an anti-corruption training program that includes a certification process and a variety of training applications to ensure broad-based reach and effectiveness.

  Manufacturer agreed to pay disgorgement of $3.1 million and prejudgment interest of $1.4 million. However the SEC did not impose a civil penalty based upon Manufacturer's cooperation with the investigation and related enforcement action.

- ***The SEC charged a worldwide drilling services and project management firm with violating the FCPA by authorizing improper payments to a third-party intermediary retained to assist the company in resolving customs disputes.***

  The SEC's complaint alleges that in 2004 the company authorized payments to a Nigerian agent totaling $1.3 million. The company did so despite former senior executives knowing that the agent intended to use the funds to "entertain" Nigerian officials involved in resolving the company's ongoing customs problems. Following the Nigerian agent's work, the company received an unexplained $3.1 million reduction of a previously assessed customs fine, and the company was permitted to nationalize and sell its Nigerian rigs.

KEYNOTE LUNCHEON SPEECH

"We look to auditors not only to help detect problems, but, most importantly, to prevent problems from occurring in the first place, by deterring those who would fudge numbers, take shortcuts, or, more subtly, tolerate inappropriate biases that have the effect of making an otherwise reasonable estimate or judgment unreasonable."

Commissioner Elisse B. Walter
U.S. Securities and Exchange Commission
32nd Annual SEC and Financial Reporting Institute Conference
Pasadena, CA
May 30, 2013

To settle the SEC's charges, the company will pay disgorgement of $3.1 million plus pre-judgment interest of $1 million. In the parallel criminal proceedings, the Department of Justice entered into a deferred prosecution agreement with the company in which it will pay an $11.8 million penalty.

- ***According to the SEC, from approximately September 1995 to November 2004, an international oil and gas company and others paid approximately $60 million in unlawful payments to intermediaries for the purpose of inducing an Iranian government official to use his influence to assist the company in connection with obtaining contracts to develop oil fields in Iran.*** The company organized under the laws of the Republic of France and headquartered in Nanterre, France. The company explores for and develops oil and gas resources around the globe. Between 1995 and 2004 the Iranian official was first the head of one wholly-owned subsidiary of Iranian oil company and later the head of it's another wholly-owned subsidiary. The Iranian official was also a government advisor to a high-ranking Iranian official. The company made these payments at the direction of the Iranian official to intermediaries through a consulting and services agreement entered into with an intermediary designated by the Iranian official.

  During the relevant time period, the company and others violated the anti-bribery provisions of the FCPA by making payments at the direction of the Iranian official in connection with obtaining contracts. In addition, the company lacked sufficient internal controls and, by mischaracterizing the payments as legitimate consulting fees, violated the books and records provisions of the federal securities laws.

  From the inception of company's relationship with the Iranian official, the company mischaracterized the expenses under the consulting agreements as "business development expenses" when they were, in fact, unlawful payments for the purpose of inducing the Iranian official to use his influence in connection with granting rights to the company for the development of oil fields. Company improperly characterized the unlawful consulting agreements as legitimate consulting agreements.

  In addition to agreeing to a cease and desist order from committing or causing any violations and any future violations of SEC rule, the company agreed to pay disgorgement of $153 million to the United States Treasury.

Financial Reporting Frauds

Examples of actions related to financial reporting frauds described in the Q2 2013 releases include:

- ***The SEC filed a complaint in the U.S. District Court for the Southern District of New York, alleging that a cloud computing company serving Chinese businesses was a sham.*** According to the complaint, the company claimed to have over 1,400 sales and marketing employees in 2010, with reported revenues of $39 million that fiscal year and projected revenues of more than $71 million for 2011.

OUTMANNED AND OUTGUNNED: FIGHTING ON BEHALF OF INVESTORS DESPITE EFFORTS TO WEAKEN INVESTOR PROTECTIONS

"Private actions give fraud victims the ability to recover their losses. It is unrealistic to expect that state regulators or the SEC will have the resources to police all securities frauds or go after every fraudster. Investors should have the ability to protect themselves."

Commissioner Luis A. Aguilar
U.S. Securities and Exchange Commission
North American Securities Administrators Association Annual NASAA/SEC 19(d) Conference
Washington, D.C.
April 16, 2013

However, by May 2011, according to the complaint, the company was revealed to have no verifiable revenues, few, if any, real customers, and no infrastructure to support a cloud computing business. The company has agreed to settle this matter, without admitting or denying the allegations in the SEC's complaint, by consenting to the entry of a final judgment that would permanently enjoin it from future violations of the law.

- ***As alleged in the SEC's complaint, in 2010, a Chinese utility failed to disclose the related-party nature of two loans totaling $14.3 million, which were made to the benefit of a real estate company that was 90 percent owned by the CEO's son, and 10 percent owned by the CEO's nephew.*** The CEO approved both loans without obtaining prior authorization from the board or informing the CFO, and according to the complaint, he repeatedly lied to the board, the auditors, investors, and the company's internal investigators to conceal the related-party nature of the loans. The SEC also alleged that, in the fourth quarter of 2008, the company paid $19.6 million to acquire a natural gas company, but did not timely and properly report the transaction in its SEC filings. To settle the SEC's charges, the company agreed to pay a penalty of $815,000, and the CEO agreed to pay a penalty of $100,000. The CEO also agreed to reimburse the company $77,479.

- ***The SEC announced final judgments by consent against a purported technology company focused on data restoration and recovery and environmentally engineered product development, along with its former CEO.*** The SEC had alleged that the defendants engaged in a scheme to commit securities and accounting fraud in 2009. In the consent judgments, the Court ordered the company to pay $150,000 and the former CEO to pay $110,000 in civil monetary penalties.

  The allegations involved filing materially false and inaccurate financial information on its financial statements. The complaint alleged that the defendants misrepresented and overstated the actual value of certain assets, known as media credits, by almost 1,000%, in an effort to bolster its balance sheet. The company then used the overvalued financial statements in two private capital raising efforts that raised over $8.4 million from unwitting investors. Shortly after raising the capital, the company issued a public statement indicating its financial statements could no longer be relied upon, in part due to the erroneous valuation of the media credits and other assets on the balance sheet. According to the complaint, the former CEO was aware of concerns surrounding the reported value of the media credits in advance of the company's periodic reports that included the financial statements filed with the SEC, yet falsely certified that the company's financial statements for those reporting periods were filed in conformity with generally accepted accounting principles ("GAAP").

REGULATION IN A GLOBAL FINANCIAL SYSTEM

"(But) the promise of global accounting standards fades if there is not consistency in their application, implementation, and enforcement."

Chairman Mary Jo White
U.S. Securities and Exchange Commission
Investment Company Institute (ICI) General Membership Meeting
Washington, D.C.
May 1, 2013

Reinstatements

The SEC reinstated two individuals to appear and practice before the SEC as accountants. Both were suspended for alleged improper conduct, including accounting improprieties, as well as filing false and misleading financial statements, while serving as CFOs. According to the complaint, one was even accused of misleading auditors.

Violations of Books and Records Rules

This quarter there were two AAERs related to books and records violations, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not meriting financial reporting fraud allegations. Both are of such significance, that they are reported in the Recommended Reading section: the first related to the importance of updating segment reporting judgments, and the second related to the importance of robust disclosures related to difficult accounting estimates.

Other

Matters reported in the Other category included an auditor independence violation action and an Order Dismissing Proceedings related to violations of the Advisor's Act after the defendant died and his estate had no assets to pay disgorgement or penalties.

This quarter there were two AAERs related to books and records violations, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not meriting financial reporting fraud allegations.

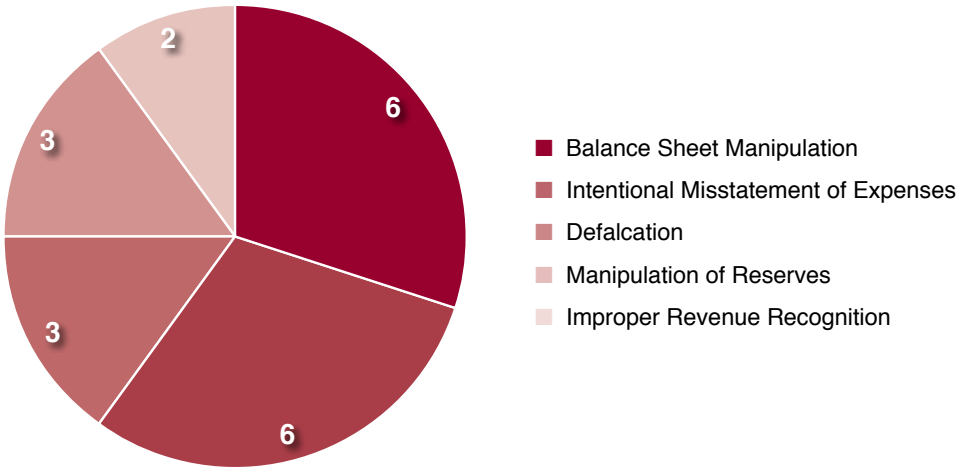
The Q2 2013 AAERs: Summary of Financial Reporting Issues

To report on the frequency of financial reporting issues involved in Q2 2013 AAERs, we identified the accounting problem(s) in each AAER based on the classification definitions below:

Classification	Definition
Improper Revenue Recognition	Overstated, premature and fabricated revenue transactions reported in public filings
Manipulation of Reserves	Improperly created, maintained and released restructuring reserves, general reserves and other falsified accruals
Intentional Misstatement of Expenses	Deceptive misclassifications and understatements of expenses
Balance Sheet Manipulation	Misstatement and misrepresentation of asset balances, and the recording of transactions inconsistent with their substance
Defalcation	Thefts of funds and assets

The following chart provides the results of our financial reporting issue analysis for the Q2 2013 AAERs.

Q2 2013 AAERs by Financial Reporting Issue



AAERs reported by Financial Reporting Issue for Quarter Ended June 30, 2013:

20

Notable Q2 2013 AAERs for "Recommended Reading"

While reviewing all of the SEC's AAERs will prove insightful, certain releases present information that is especially worth further review and analysis by those involved with financial reporting matters. We deem these particular releases as earning the distinction of "recommended reading" for our clients. This quarter, two of the releases describing violations of books and records requirements are useful reminders related to updating segment reporting judgments and the importance of robust disclosures related to difficult accounting estimates.

Securities and Exchange Commission v. PACCAR Inc, et al., Civil Action No. 2:13-cv-00953 (W.D. Wash. filed June 3, 2013)

In a complaint filed in the U.S. District Court in Seattle, the SEC alleged that from 2008 through the third quarter of 2012, PACCAR, Inc. ("PACCAR"), failed to report the results for its parts business as a separate segment from its truck sales as required under GAAP.

PACCAR is a Fortune 200 company that designs, manufactures, and distributes trucks and related aftermarket parts that are sold worldwide under the Kenworth, Peterbilt, and DAF nameplates. The release is particularly important as a reminder for businesses to be mindful of the importance of the continual need to review segment reporting judgments as economic and business changes frequently occur. Needless to say, this is something PACCAR allegedly failed to do properly.

Before describing the PACCAR situation, the relevant requirements of ASC Section 280-10-50 for identifying and presenting reportable segments in a business include:

a) It engages in business activities from which it may earn revenues and incur expenses (including revenues and expenses relating to transactions with other components of the same public entity);
b) Its operating results are regularly reviewed by the public entity's chief operating decision maker to make resource allocation decisions for the segment and assess its performance;
c) Its discrete financial information is available.

Furthermore, the guidance states that two or more operating segments may be aggregated into a single operation segment if aggregation is consistent with the objective and basic principles for segment reporting and if the segments have similar economic characteristics, as well as the segments are similar in all of the following areas:

a) The nature of the products and services;
b) The nature of the production processes;
c) The type or class of customer for their products and services;
d) The methods used to distribute their products or provide their services;
e) If applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

Importantly, the purpose of proper segment reporting is to provide relevant information to the users of the financial statements, similar to the information that management uses to evaluate and run the business.

To assess what happened at PACCAR, for illustration purposes let's review certain key facts from PACCAR's 2009 segment reporting and other financial results including:

- PACCAR reported two segments: Trucking and Financial Services; The Trucking segment reported $68 million in income before taxes in 2009;
- The Trucking segment included the sales activities for trucks and parts sold in the aftermarket;
- PACCAR internal management documents and board materials for 2009 for the trucks business reflect a $474 million loss and the parts business with a $542 million profit to arrive at the net income before taxes of $68 million.

From these facts, one can see that the economic conditions following the most recent recession materially altered the similarity of the trucks and parts' businesses. Trucks incurred a significant loss while the parts business was profitable.

As one may expect, customers for large dollar items such as trucks frequently defer purchases during a down economy, whereas parts remain a necessity—and possibly even a greater need—as vehicles age. Adding to the significance of the bifurcation of parts is the fact that both management and the board were already analyzing the financial results in this very same manner.

According to the complaint, by at least 2008, PACCAR should have been reporting aftermarket parts as a separate segment in its SEC filings, but failed to do so until year-end 2012. The SEC's complaint raises other concerns with PACCAR's financial reporting and internal controls including an alleged failure to maintain accurate books and records regarding their impaired loans and leases; which caused them to improperly identify and disclose loans and leases for impairment, and other matters.

This quarter, two of the releases describing violations of books and records requirements are useful reminders related to updating segment reporting judgments and the importance of robust disclosures related to difficult accounting estimates.

Without admitting or denying the charges, PACCAR agreed to the entry of a permanent injunction, and agreed to pay a $225,000 penalty. The settlement, which is subject to court approval, takes into account that PACCAR and PACCAR Financial Corp. have implemented a number of remedial measures to enhance their internal accounting controls and improve their compliance with GAAP.

The lesson for financial statement preparers from the PACCAR situation is the importance of continually assessing segment reporting judgments. Businesses rarely remain static and changes to internal reporting and structures as well as external market forces can impact the proper identification of reportable segments.

In the Matter of Capital One Financial Corporation, Peter A. Schnall, and David A. Lagassa, Respondents Administrative Proceeding File No. 3-15299

As evident from the AAER related to Capital One Financial Corporation ("Capital One"), financial crisis matters are still working their way through the enforcement system. Per the release, Capital One, a provider of consumer and commercial lending and diversified banking services, materially understated its provision for loan and lease losses (the "provision for loan losses" or "loan loss expense") for the second and third quarters of 2007.

The lesson for financial statement preparers from the PACCAR situation is the importance of continually assessing segment reporting judgments. Businesses rarely remain static and changes to internal reporting and structures as well as external market forces can impact the proper identification of reportable segments.

The understatement related to the provision for loan losses for Capital One's auto finance business, known as Capital One Auto Finance ("COAF"). As a result of the understatement, Capital One materially understated its provision for loan losses by as much as $72 million in its second quarter filing and as much as $51 million in its third quarter filing.

Estimating the allowance for loan and lease reserves involves the consideration of historical payment trends, portfolio changes and other economic events that may affect the collectability of the loan amounts. While grounded in analytics and math, judgment plays a major role in establishing a fair reserve balance. And as evident from this release, strong disclosure will always provide a certain level of protection against judgments proven inadequate when reviewed with hindsight.

According to the release, starting no later than October 2006 and continuing through the third quarter of 2007, COAF experienced significantly higher charge-offs and delinquencies for its loans than it had forecasted. COAF, whose profitability was primarily derived from extending credit to subprime consumers, experienced these higher loss variances across all types of loans. Needless to say, with hindsight we now know that the economy was starting to materially turn downward during this period, although at this time few were predicting the severity of the ensuing recession.

Instead of incorporating the full impact of the macroeconomic changes generated by its loss forecasting tool into COAF's loss forecast, Capital One only included one-third of such incurred losses in its third quarter provision for loan losses. These judgments were not well documented or disclosed in the financial statements based on the findings contained in the release.

Upon review, the SEC concluded that the judgments made disregarding the full extent of macroeconomic factors were flawed. As a result, Capital One's second and third quarter loan loss expense for COAF did not appropriately estimate probable incurred losses in accordance with accounting requirements.

Because Capital One failed to include certain incurred losses as of its balance sheet date and importantly, failed to ***adequately document*** the rationale for its accounting treatment for such losses, it violated the books and records and internal control provisions of the federal securities laws. These failures also violated Capital One's own policies and procedures, which, among other things, required Capital One's accounting group to ensure that COAF's loan loss expense was ***properly supported and documented*** and required Capital One's credit risk management function to ***fully disclose the significant assumptions*** underlying its loan loss allowance determination to the management committee responsible for ensuring that Capital One's allowance comported with accounting guidelines.

An interesting observation from reading the release and understanding the nuances of forming accounting judgments and estimates is whether the action would have ever occurred if simply a sentence or two of disclosure was included in Capital One's public filings. While one must be prudent with making disclosures, certainly disclosing judgments involved in an estimation process that lets the reader of the financial statement understand difficult judgments during volatile times is a safeguard that all should consider. In simple terms, good disclosure always bolsters weak or uncertain accounting, and is a best practice for robust financial reporting.

In simple terms, good disclosure always bolsters weak or uncertain accounting, and is a best practice for robust financial reporting.

The SEC settled the action against Capital One and the individuals responsible for the judgments, Capital One's Chief Risk Officer at the time, Peter A. Schnall, and COAF's Divisional Credit Officer at the time, David A. LaGassa in return for a cease and desist order and financial penalties.

SEC Enforcement Actions Addressing Misconduct That Led To or Arose From the Financial Crisis
Key Statistics (through June 15, 2013)

Statistic	Amount
Number of Entities and Individual Charged	157
Number of CEOs, CFOs, and Other Senior Corporate Officers Charged	66
Number of Individuals Who Have Received Officer and Director Bars, Industry Bars, or Commission Suspensions	36
Penalties Ordered or Agreed To	> $1.53 billion
Disgorgement and Prejudgment Interest Ordered or Agreed To	> $756 million
Additional Monetary Relief Obtained for Harmed Investors	$400 million*
Total Penalties, Disgorgement, and Other Monetary Relief	**$2.68 billion**

*In settlements with Evergreen, J.P. Morgan, State Street, TD Ameritrade, and Claymore Advisors
http://www.sec.gov/spotlight/enf-actions-fc.shtml

Prior Period Comparisons: Year over Year and Quarter over Quarter Statistics

As described in "Our Process and Methodology" section, AAERs are intended to highlight certain actions and are not meant to be a complete and exhaustive compilation of all of the actions that may fit into the definition the SEC provides for the classification. That said, comparisons of the number of AAERs between periods may be a useful gauge of the SEC's activities.

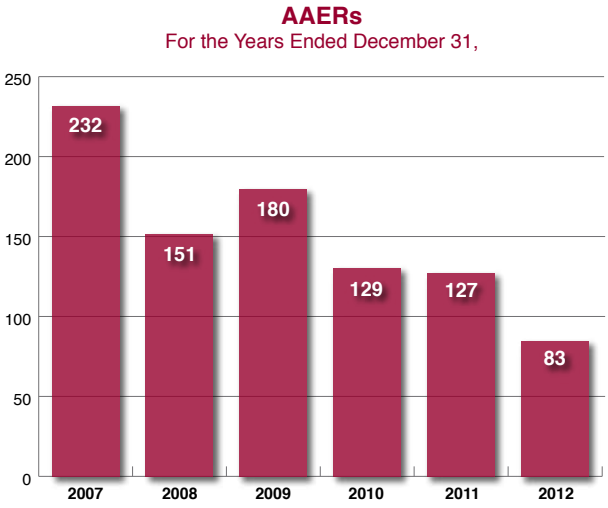
For the year ended December 31, 2012, the SEC issued 83 AAERs, remarkably the lowest number of AAERs reported over the last six years. For comparison, the average for the periods 2007 through 2012 was approximately 150 releases, with the greatest number of releases issued in 2007.

AAERs reported for Year Ended December 31, 2012:

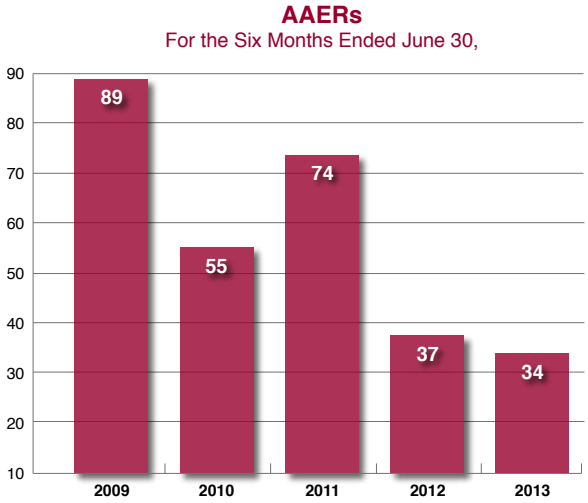
83

AAERs reported for the Six Months Ended June 30, 2013:

34

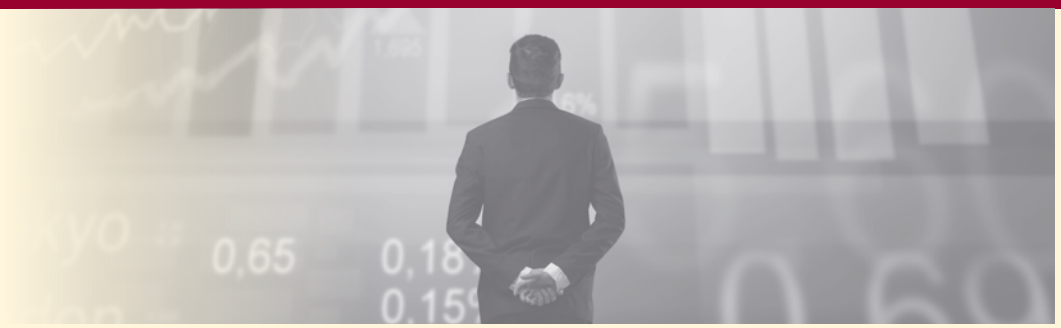


When analyzing the AAER population issued during the first six months for the years 2009 through 2013, the significant drop experienced from 2011 to 2012 appears to have relatively stabilized in 2013. This may possibly reflect new level of expected activities, something we will monitor in future periods.



SEC NEWS: SPECIAL ANNOUNCEMENTS AND UPDATES

During the quarter ended June 30, 2013, the SEC announced several newsworthy items including the major developments described below.



SEC Says Social Media OK for Announcements if Investors Are Alerted

The SEC announced that companies can use social media outlets like Facebook and Twitter to announce key information in compliance with Regulation Fair Disclosure (Regulation FD). However investors must be on notice as to which social media outlets will be used to disseminate such information.

The SEC have confirmed that Regulation FD applies to social media and other emerging means of communication used by public companies the same way it applies to company websites. The SEC issued guidance in 2008 clarifying that websites can serve as an effective means for disseminating information to investors if they've been made aware that's where to look for it.

Per George Canellos, Acting Director of the SEC's Division of Enforcement, "One set of shareholders should not be able to get a jump on other shareholders just because the company is selectively disclosing important information." Mr. Canellos added that, "most social media are perfectly suitable methods for communicating with investors, but not if the access is restricted or if investors don't know that's where they need to turn to get the latest news."

Regulation FD requires companies to distribute material information in a manner reasonably designed to get that information out to the general public broadly and non-exclusively. It is intended to ensure that all investors have the ability to gain access to material information at the same time. ■

SEC Proposes Money Market Fund Reforms

The SEC voted unanimously to propose rules that would reform the way that money market funds operate. The objectives for the reforms are to make money market funds less susceptible to investor panics that ultimately could harm investors and the market overall.

The SEC's proposal includes two principal alternative reforms that may be adopted alone or in combination. The first alternative would require a floating net asset value (NAV) for prime institutional money market funds. The second alternative would allow the use of liquidity fees and redemption gates in times of stress. The proposal also includes additional diversification and disclosure measures that would apply under both alternatives.

The SEC has been evaluating the need for money market fund reforms after the Reserve Primary Fund "broke the buck" during the financial crisis in September 2008.

Speaking on the reforms, Mary Jo White, Chair of the SEC stated "Our goal is to implement effective reform that decreases the susceptibility of money market funds to runs and prevents events like what occurred in 2008 from repeating themselves." The public comment period for the proposal will last for 90 days after its publication in the Federal Register. ■

SEC Renames Division Focusing On Economic and Risk Analysis

The SEC announced that it has changed the name of its Division of Risk, Strategy, and Financial Innovation to better reflect its responsibilities and focus. Effective immediately, it will be called the "Division of Economic and Risk Analysis."

The division was created in 2009 as the successor to three then-existing offices: the Office of Economic Analysis, Office of Risk Assessment, and Office of Interactive Data. These offices and other functions were combined to leverage expert staff and to provide sophisticated and data-driven economic and risk analyses to help inform the agency's policymaking, rulemaking, enforcement, and examinations.

"The division serves a central role in the SEC's ongoing commitment to rigorous economic analysis. It has grown significantly since its inception in 2009, not only almost doubling its staff since that time but also expanding its efforts to provide economic analysis and risk assessment to support the Commission's mission," said SEC Chair Mary Jo White. "This new name not only echoes the three offices that formed the core of the division, but also reflects the breadth of its still-expanding responsibilities."

Per the release, the Division of Economic and Risk Analysis has a broad role in SEC activities, interacting with nearly every division and office. Importantly, the division provides economic analysis in support of SEC rulemaking and other policy initiatives. The division also supports the work of the Division of Enforcement, for example, by providing economic and quantitative analysis related to enforcement actions. The division conducts economic research, risk assessment, and data analytics to help staff across the SEC anticipate, identify, and manage risk, particularly focusing on early identification of fraud and illegal or questionable activities. ■

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ABOUT Floyd Advisory
Floyd Advisory is an independent business advisory and forensic accounting firm with offices in Boston and New York City, providing services relating to: financial reporting problems, fraud investigations, SEC reporting issues, white collar defense matters, post-acquisition disputes, business damages, financial and valuation analyses.

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