Floyd Advisory

Summary of Accounting and Auditing Enforcement Releases for the Year Ended December 31, 2013

ANNUAL 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 year ended December 31, 2013.

As an independent consulting firm with financial and accounting expertise, we are committed to contributing thought leadership and relevant research regarding financial reporting topics 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 related to "accounting and auditing" 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
JANUARY 2014

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 to the information provided by the SEC, we sorted the releases into major categories (e.g., Rule 102(e) Actions, Financial Reporting Frauds, Foreign Corrupt Practices Act violations ("FCPA"), Reinstatements to Appear and Practice before the SEC, Violations of Books and Records, 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 our 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

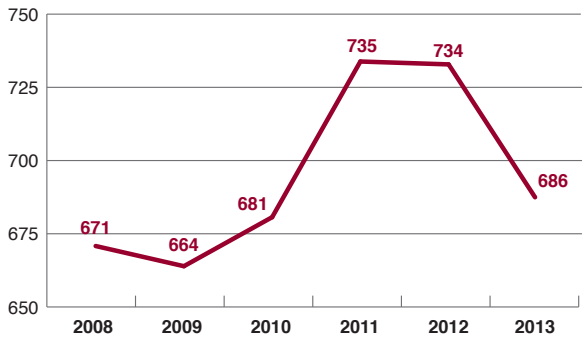
SEC Enforcement Actions: 2013 Results Dip from Record Highs

SEC Enforcement Actions for the Year Ended September 30, 2013:

686

Before summarizing information related to the 2013 population of AAERs, summarizing the SEC's overall enforcement actions provides insights into the trends and types of actions receiving the most attention. As reflected on the chart to the right, the volume of actions filed for the year ended September 30, 2013 dropped by approximately 7% from the record levels experienced in 2011 and 2012.

Total SEC Enforcement Actions
For The Years Ended September 30,



To dig further into these numbers, the following table provides data on the categories of actions filed annually for the years ended September 30, 2004 through September 30, 2013.

SEC Categorization of Enforcement Actions
For the Years Ended September 30,

Enforcement Actions by Fiscal Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Broker-Dealer	140	94	75	89	67	109	70	112	134	121
Delinquent Filings	n/a	n/a	91	52	113	92	106	121	127	132
FCPA	n/a	n/a	n/a	n/a	n/a	n/a	n/a	* 20	15	5
Financial Fraud/Issuer Disclosure	179	185	138	219	154	143	126	** 89	79	68
Insider Trading	42	50	46	47	61	37	53	57	58	44
Investment Adviser/ Investment Co.	90	97	87	79	87	76	113	146	147	140
Market Manipulation	39	46	27	36	53	39	34	35	46	50
Securities Offering	99	60	61	68	115	141	144	124	89	103
Other	50	98	49	65	21	27	35	31	39	23
Total Enforcement Actions	**639**	**630**	**574**	**655**	**671**	**664**	**681**	**735**	**734**	**686**

*Prior to FY 2011, FCPA was not a distinct category and FCPA actions were classified as Issuer Reporting and Disclosure.
**Prior to FY 2011, this category was reported as Issuer Reporting and Disclosure and included FCPA actions. Starting in FY 2011, FCPA actions are now tracked separately from financial fraud/issuer disclosure actions.
NOTE: In the future, certain categories of enforcement actions will be excluded from the fiscal year total. Using that methodology in FY 2013 would have resulted in a count of 676 enforcement actions.
Source: U.S. Security and Exchange Commission http://www.sec.gov/news/newsroom/images/enfstats.pdf

Definitions of these categories, however, were not readily available from the SEC's Fiscal Year 2013 Agency Financial Report, but based on the expected types of actions in each category and our experience, we prepared the following summary of the types of enforcement actions expected to be classified in each category.

Category	Types of Enforcement Actions
Broker-Dealer	Stock price manipulation, violations arising out of compliance deficiencies, naked short selling schemes, improper trading activities by Broker-Dealers
Delinquent Filings	Failures to make required and or timely filings with the SEC including Forms 10K, 10Q, 8K and other mandated submissions
FCPA	Bribes and kickbacks to foreign officials to assist in obtaining or retaining business as well as cases involving internal control violations
Financial Fraud/Issuer Disclosure	Fraudulent financial reporting matters, cases involving misleading statements to investors and faulty and or inadequate disclosure matters
Insider Trading	Buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, nonpublic information about the security
Investment Adviser/Investment Company	Misleading disclosures, improper fee arrangements, misappropriation of client assets, market manipulation, and other violations of the Investment Advisers Act
Market Manipulation	Creating false appearance of a liquid and active market, fraud involving dormant microcap shell companies and other disruptive trading activities
Securities Offering	Misleading and fraudulent representations to induce investors to enter into securities transactions

THE IMPORTANCE OF TRIALS TO THE LAW AND PUBLIC ACCOUNTABILITY

"Following a change I made in June to the SEC's no admit/no deny settlement protocol to require admissions in certain cases, some have predicted that more of our cases will go to trial. And some have asked whether the agency's trial lawyers are ready to go up against the best of the white collar defense bar. It will probably come as no surprise to you, but my answer is a resounding yes."

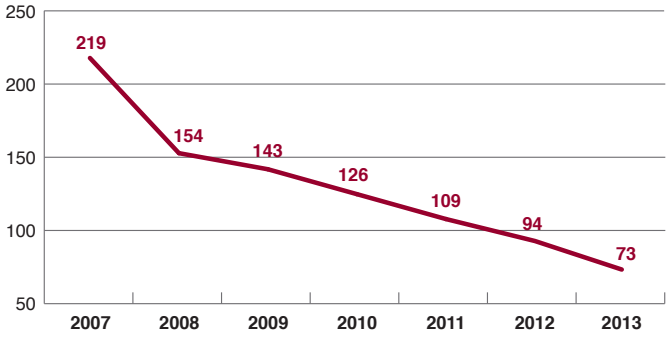
"If, in fact, a result of our change in settlement policy results in more trials, one clear winner will be the administration of justice, which will always fare best in the open for the public to see and to take stock of what a defendant did and what its government is doing."

Chairman Mary Jo White
5th Annual
Judge Thomas A. Flannery Lecture
Washington D.C.
Nov. 14, 2013

Drop in Financial Fraud Cases Continues

The financial fraud-related matters (tabulated by category on page two as Financial Fraud/Issue Disclosure matters combined with FCPA cases) decreased approximately 67% from 2007 to 2013. Of significance, the financial fraud-related matters represented approximately 33% of all SEC enforcement actions in 2007 compared to only approximately 11% in 2013. The chart to the right illustrates this dramatic decline in financial fraud-related matters.

Financial Fraud-Related Enforcement Actions
For The Years Ended September 30,



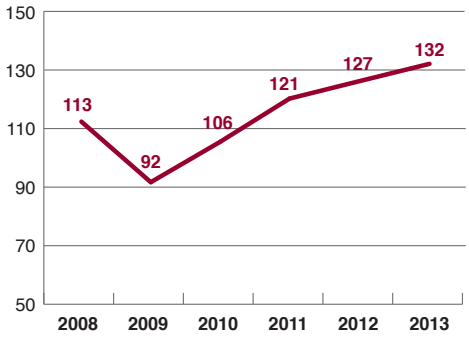
*Inclusive of Financial Fraud/Issue Disclosure/FCPA matters

Of significance, the financial fraud-related matters represented approximately 33% of all SEC enforcement actions in 2007 compared to only approximately 11% in 2013.

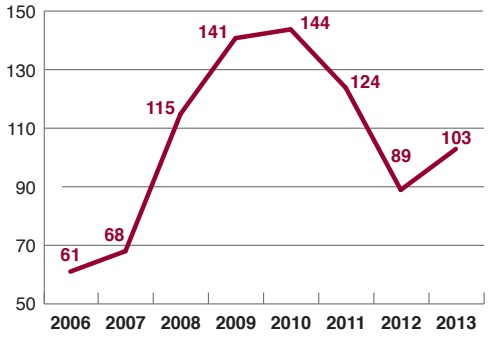
In contrast to the pattern for fraud-related cases, violations for compliance items rose throughout the last several years. As the chart below illustrates, the number of enforcement actions related to Delinquent Filings continued to rise from 92 to 132 from 2009 through 2013, offsetting drops in other categories. In fact, Delinquent Filings is the only category to show a consistent pattern of increases since 2009.

The Securities Offering category reported the largest percentage and actual increase in 2013 with an increase of 14 actions over 2012 (a 16% increase). However, as illustrated below, the variation in such cases may reflect the cycles experienced in the capital markets plus the lag from violation to enforcement action. It will be interesting to monitor any differences in Securities Offering enforcement cases resulting from the standards created by the Jumpstart Our Business Startups Act of 2012 ("JOBS Act") that make access to the capital markets more accessible.

Delinquent Filings
For The Years Ended September 30,



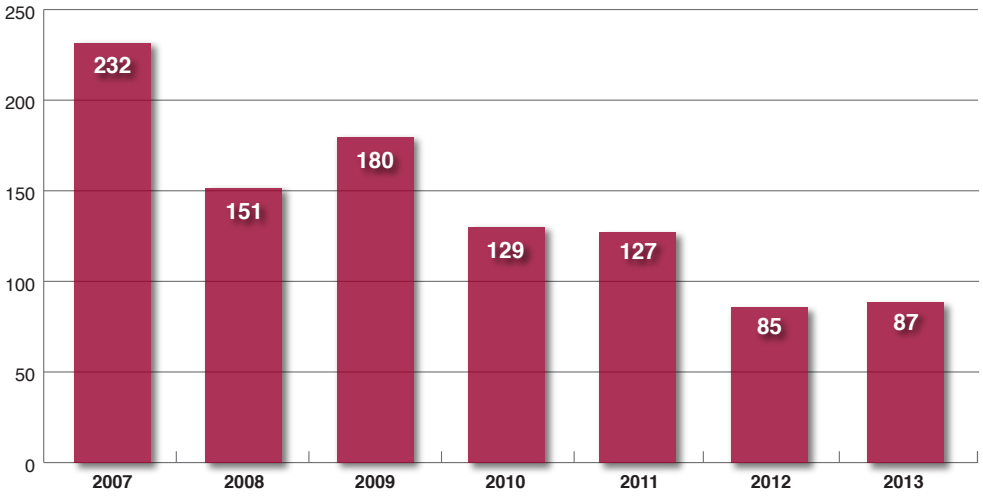
SEC Securities Offerings Enforcements
For The Years Ended September 30,



AAERs for Year Ended December 31, 2013: Major Observations and Insights

For the year ended December 31, 2013, the SEC issued 87 AAERs, representing approximately the same volume reported in 2012 and a 63% drop from the volume reported in 2007.

AAERs
For The Years Ended December 31,



To evaluate the decline in AAERs, one should consider the types of matters being handled by the SEC. Importantly, AAERs are intended to highlight certain enforcement actions and are not meant to be a complete and exhaustive compilation of all the actions that may fit into the definition the SEC provides for this classification. Furthermore, in our experience, matters reported as AAERs quite often arise out of financial reporting frauds and other related enforcement actions, categories that have experienced a similar drop in activity.

REMARKS BEFORE THE 2013 AICPA NATIONAL CONFERENCE ON CURRENT SEC AND PCAOB DEVELOPMENTS—AUDIT POLICY AND CURRENT AUDITING AND INTERNAL CONTROL MATTERS

"Auditor independence is an area that requires attention in connection with selecting an auditor, throughout the entire audit relationship, and potentially even beyond."

Brian T. Croteau
Deputy Chief Accountant
Office of the Chief Accountant
Dec. 9, 2013

102(e) Enforcement Actions Earn the Top Position

To evaluate the types of AAERs issued in 2013, we sorted the releases into major categories: Financial Reporting Frauds, Rule 102(e) Actions, Foreign Corrupt Practices Act violations ("FCPA"), Violations of Books and Records, Reinstatements, and Other.

For 2013, Rule 102(e) matters dominated the releases accounting for over 47% of the reported AAERs. No other classification has so dominated the AAER population over the last three years.

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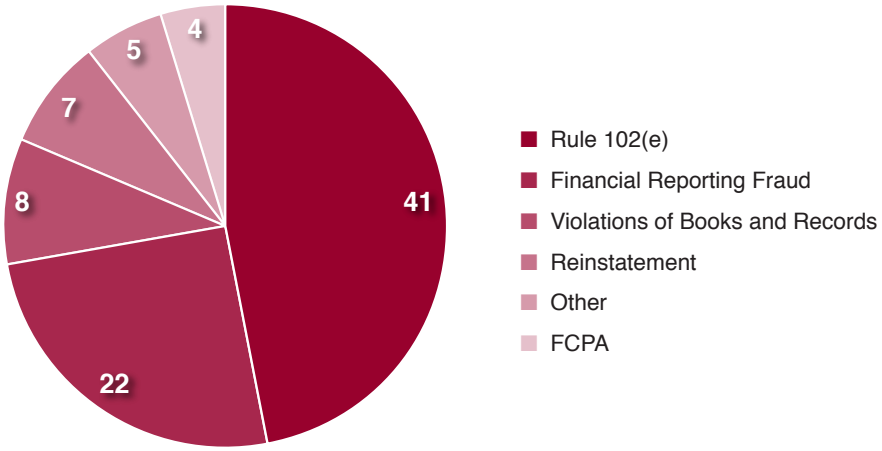
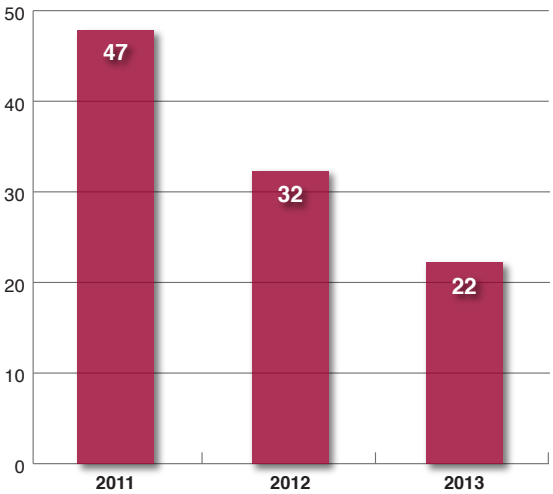
2013 AAERs by Category



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 or negligent conduct, defined as a single instance of highly unreasonable conduct that violates professional standards, or repeated instances of unreasonable conduct that indicate a lack of competence resulting in a violation of professional standards.

Financial Reporting Fraud AAERs
For The Years Ended December 31,



Financial Reporting Fraud-related releases dropped to the lowest number reported in the last three years.

As reported later in our report, for the Rule 102(e) AAERs filed during the last three years, the average lag from the alleged violation to the filing of the AAER and resolution for the Rule 102(e) matters was approximately six years with the longest being almost 16 years before finality.

The 2013 AAERs: Summary of Financial Reporting Issues

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

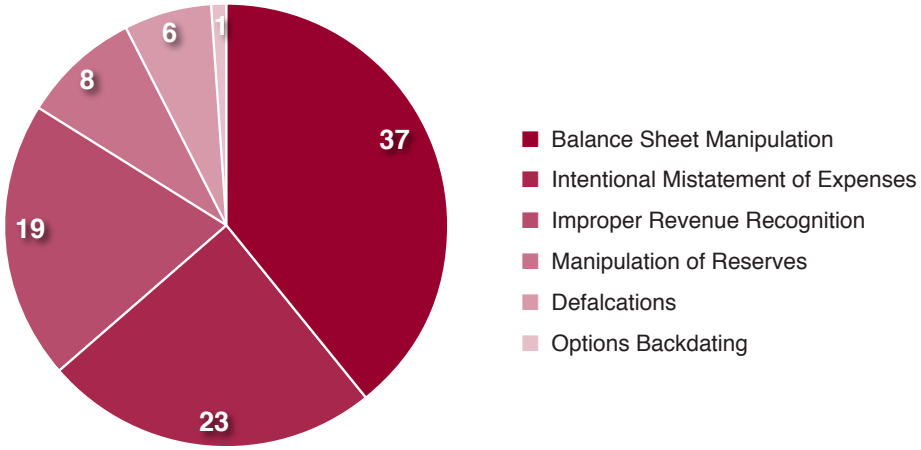
Classification	Definition
Improper Revenue Recognition	Overstated, premature, and fabricated revenue transactions reported in public filings
Manipulation of Reserves	Improperly created, maintained, and released restructuring reserves, general reserves, and other falsified accruals
Intentional Misstatement 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
Options Backdating	Intentional misdating of stock option awards

KEYNOTE ADDRESS AT THE INTERNATIONAL CONFERENCE ON THE FOREIGN CORRUPT PRACTICES ACT

"In highlighting our performance, it is also important to note that our success with FCPA cases is due, in part, to the incredibly fruitful partnerships we have built with the DOJ and FBI. Our work with the DOJ and FBI has allowed the United States to develop the most formidable anti-corruption law enforcement effort in the world."

Andrew Ceresney
Co-Director of the
Division of Enforcement
Washington, DC
Nov. 19, 2013

Financial Reporting Issues Identified in 2013 AAERs



AAERs reported by Financial Reporting Issue for Year Ended December 31, 2013:

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As shown above, balance sheet manipulation represented the most common financial reporting issue in the 2013 AAER population. Importantly, as described in the "Our Process and Methodology" section, we record each accounting problem identified in the releases as a separate item and therefore many actions involving improper revenue recognition, manipulation of reserves, and the intentional misstatement of expenses also have a balance sheet impact.

The strong occurrence of balance sheet manipulation can be to be correlated with releases related to the financial crisis with loan loss reserve and other alleged asset valuation improprieties appearing frequently.

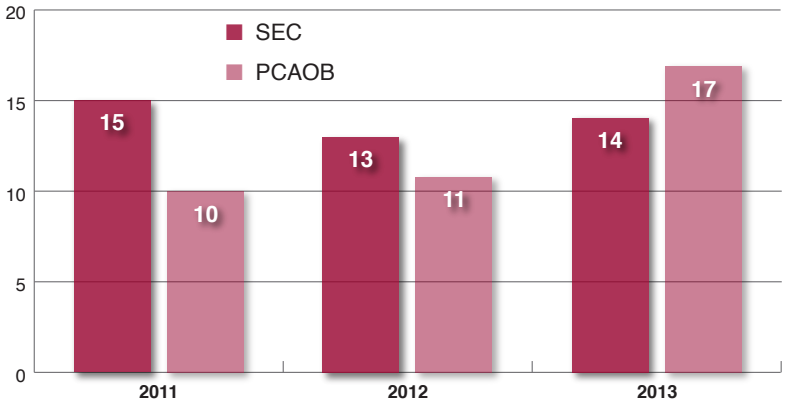
Notable Trends and Observations in AAERs

As the third year of our reporting on AAERs has drawn to a close, we have noticed some significant trends in the SEC's activities. We have highlighted a few of our key observations below including a look at actions against auditors, a downward trend in FCPA actions, the "age" of reported AAERs, and an overview of AAERs by industry. We are excited to offer these new analyses and are keen to see if any of the patterns we have observed continue in the coming years.

Actions Against Auditors: Changing of the Guard?

From reviewing the AAERs related to auditors, we noted that levels of activity have remained relatively constant over the last three years. However, while the SEC's actions may be steady, there has been a sizeable increase in Public Company Accounting Oversight Board (PCAOB) enforcement actions against auditors, as shown on the chart below.

SEC and PCAOB Audit-Related Enforcement Actions
For The Years Ended December 31,



Both the SEC and PCAOB have the power to bring enforcement actions against auditors, albeit PCAOB disciplinary actions against auditors are subject to review by the SEC. In fact, in certain instances, the PCAOB investigates the auditor's conduct and the SEC focuses its investigation on the public company, its management, and other parties. In other cases, the SEC's Division of Enforcement takes responsibility for an auditor investigation and requests that the PCAOB defer to that investigation.[1] That said, the SEC appears to have control over what actions either organization takes, which makes the data reported in the chart above informative as to an apparent rise in the enforcement visibility of the PCAOB.

From reviewing the AAERs related to auditors, we noted that levels of activity have remained relatively constant over the last three years. However, while the SEC's actions may be steady, there has been a sizeable increase in Public Company Accounting Oversight Board (PCAOB) enforcement actions against auditors.

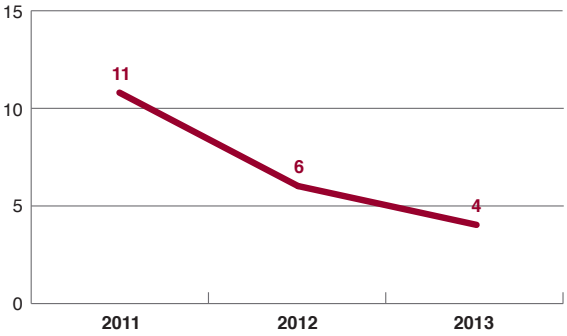
[1]Doty, James R. (Chairman, PCAOB). "What's Changed: New Frontiers for Auditors Without Borders." 19th Annual SMU Corporate Counsel Symposium. Dallas, TX. 14 October 2011.

Where Have the FCPA Cases Gone?

There were only four reported FCPA AAERs in 2013, down from eleven just two years ago. When observing the decline, one wonders if this indicates that companies have stopped violating the law or if this may alternatively be due to other causes.

There were only four reported FCPA AAERs in 2013, down from eleven just two years ago.

AAERs: FCPA Cases
For The Years Ended December 31,



*Inclusive of Financial Fraud/Issue Disclosure/FCPA matters

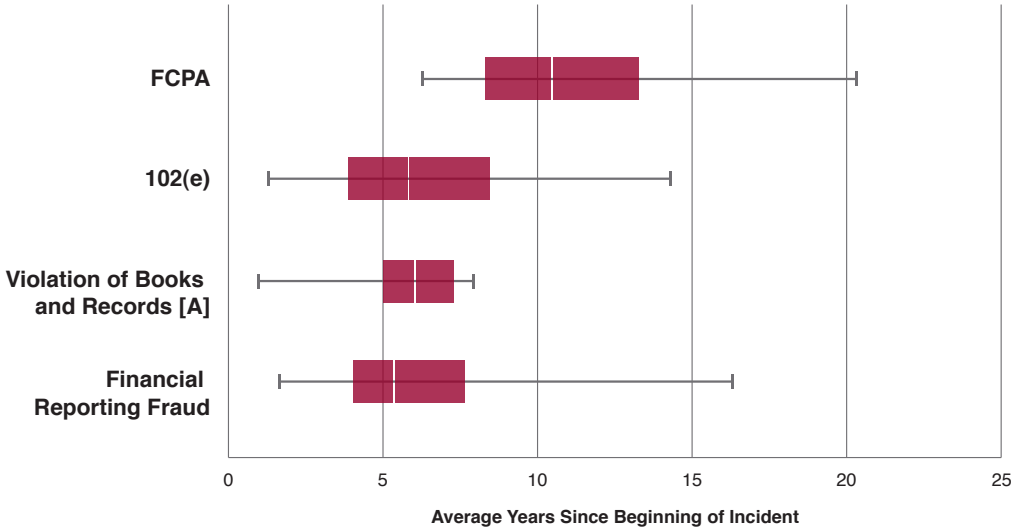
Both the SEC and the DOJ established FCPA task forces in 2010 and their cases tended to overlap. However, one case that ended in 2012 appears to have absorbed significant resources during this period as it saw 150 FBI agents execute search warrants in multiple countries and marked the first time investigators went undercover on an FCPA case. The defendants allegedly bribed foreign officials to gain contracts for manufacturing military equipment. After a multi-year operation on this case and several guilty pleas, the DOJ was forced to drop the charges against all 22 defendants including those that had already pled guilty.

Other notable events since the establishment of the FCPA units are that both original chiefs have since stepped down. The original head of the SEC's FCPA unit left in the middle of 2011 to become a partner at a law firm. At the DOJ, an Assistant Attorney General appointed in 2009, who was often touted as being a champion on FCPA violations, stepped down at the beginning of 2013. It is also worth noting that the DOJ's FCPA unit appears to have been merged into another unit this past year.

FCPA Violations Linger Longest

Between the years 2011 and 2013, the average "age" of incidents reported in AAERs was 7.3 years. A clear pattern is revealed in the "age" of incidents when categorized by type as reflected in the chart on the next page. Namely, AAERs for FCPA violations are typically released approximately 11 years after the start of the violation, with some cases extending back over 20 years. In fact, the minimum "age" of an FCPA violation is almost equal to the median age for all other types of incidents. It is possible that many FCPA violations go undetected longer than other violations because they occur outside the United States and are therefore harder to detect and investigate.

Age Trend Analysis of AAER Categories



Notes: The analysis is assuming midyear convention
[A] Violations of Books and Records was only analyzed for the year 2013

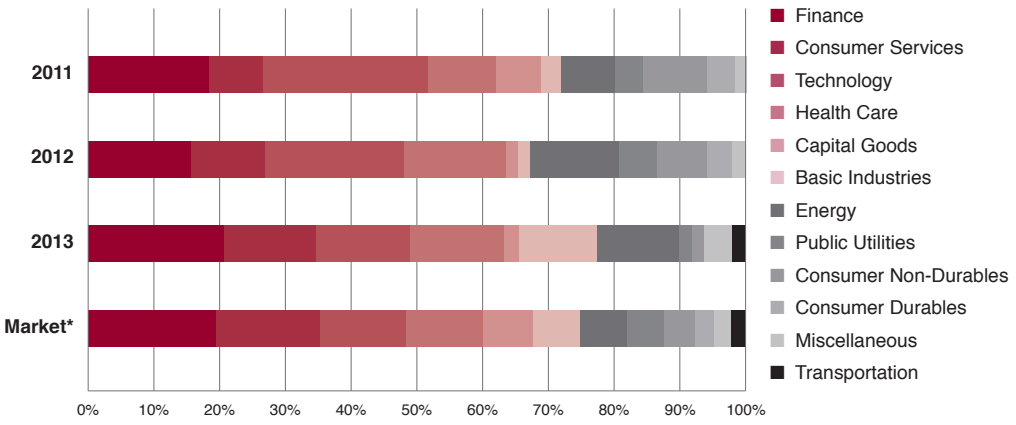
The chart above is referred to as a "box-and-whisker plot" and reflects the length of average time between the date of the violation and the release for all reported AAERs over the last three years, with the exception of Violations of Books and Records which was analyzed only for the year 2013. The median is denoted by the center line in each box and the endpoints of the "whiskers" represent the minimum and maximum ages of the incidents. The sides of the boxes represent the first and third quartiles, therein indicating the most common "ages" for incidents in each category.

Between the years 2011 and 2013, the average "age" of incidents reported in AAERs was 7.3 years.

AAERs Proportionate to Industry Representation

The chart below reflects the percentage of AAERs issued for each industry over the last three years along with the market share of public registrants by industry in 2013. Of note, the AAERs by industry are roughly proportional to the market share as of 2013 for each stated industry.

Prevalence of AAERs by Industry vs. Market Share



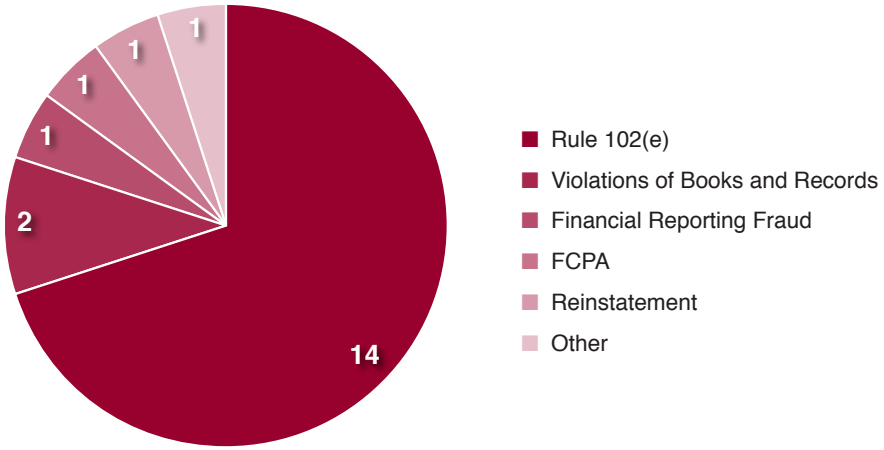
*Source: http://www.nasdaq.com/screening/companies-by-industry.aspx?industry=ALL

Overview of Q4 2013 AAERs

As part of our annual report on AAER activity, we provide an abbreviated version of our quarterly reporting for the final quarter of the year. The SEC reported 20 AAERs in Q4 2013 which is consistent with results of the annual information presented earlier.

Rule 102(e) violations dominated the releases in Q4. In fact, Rule 102(e) violations accounted for 70% of the releases in Q4, the highest percentage for any category over the last three years.

Q4 2013 AAERs by Category



The SEC reported 20 AAERs in Q4 2013 which is consistent with results of the annual information presented earlier.

Also consistent with the 2013 annual results, balance sheet manipulation led all other issues in Q4 2013, accounting for almost 53% of the identified issues.

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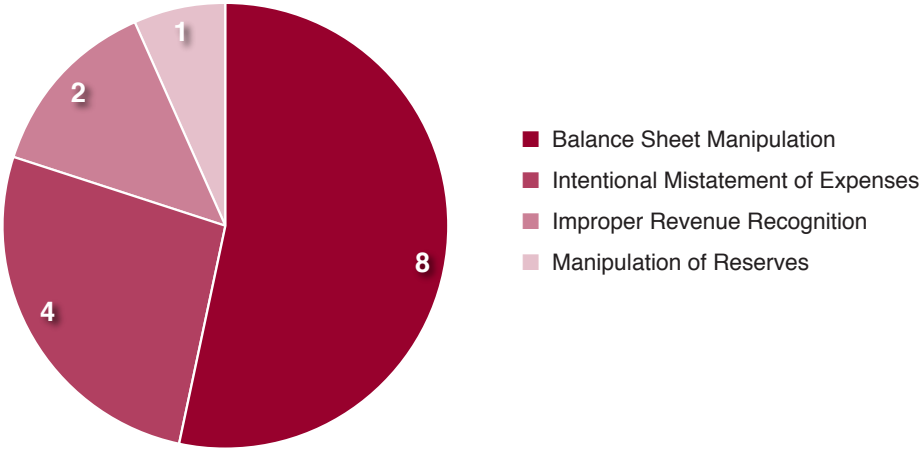
Financial Reporting Issues Identified in Q4 AAERs



Q4 2013 "Recommended Reading" AAER

While reviewing all of the SEC's AAERs would prove insightful, certain releases present information that is especially worthy of 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.

Below is an AAER related to a violation of books and records that arose at public company InPhonic, Inc., a violation facilitated by the privately-held Americas Premiere Corporation. The AAER contains many interesting aspects, but the alleged use of round-trip transactions to alter financial statements and the assumed subsequent culpability of an employee at said private company stands out as unique and worthy of highlighting.

Securities and Exchange Commission v. Paul V. Greene,
Civil Action No. 1:12-CV-00119 (JEB/JMF) (D.D.C.)
Accounting and Auditing Enforcement Release No. 3510 / October 28, 2013

The SEC announced a final judgment against defendant Paul V. Greene, the president of privately-held Americas Premiere Corporation ("APC"), for his involvement in an alleged fraudulent scheme to assist a customer, InPhonic, Inc. ("InPhonic"), with overstating its financial results from the third quarter of 2005 through the end of 2006. InPhonic was a public registrant during this time frame. The SEC previously entered a final judgment on civil fraud charges brought against a former senior vice president of InPhonic.

According to the SEC, the improper conduct undertaken by Mr. Greene and the former senior vice president of InPhonic involved fabricating sales credits for items such as "rebates," "volume bonuses," "volume discounts," and "price protection" on cellular phones and related products purchased by InPhonic from APC. The complaint stated that during 2005 and 2006, the phony credits totaled nearly $10 million and resulted in improperly understating the costs of goods sold for InPhonic during those years.

Because InPhonic filed for bankruptcy in 2007, before the supposed scheme was detected, the complaint does not fully describe the extent of the accounting treatment for the credits. However, the complaint states that APC did actually make cash payments to InPhonic for certain of the credits and that InPhonic maintained a receivable on its books for the outstanding credit balance due from APC.

While InPhonic allegedly never fully paid back the amounts due to APC, it did engage in a purported scheme to return the monies by paying inflated prices for subsequent purchases of products and services as well as by sending phones back to APC for it to resell.

This AAER contains many interesting aspects, but the alleged use of round-trip transactions to alter financial statements and the assumed subsequent culpability of an employee at said private company stands out as unique and worthy of highlighting.

Interestingly, InPhonic restated its results for the same period that these transactions were reported, but the alleged improper conduct and accounting treatment were not identified nor included in the restatement. In fact, according to the SEC complaint, these issues were only detected because APC and Mr. Greene threatened to file a lawsuit to recover the amounts that had been advanced to InPhonic. The amounts that remained unpaid were at risk of being uncollectable as InPhonic was filing for bankruptcy.

When transactions are only entered into for the purpose of moving money between entities to achieve an accounting result and otherwise lack economic substance, they are commonly referred to as "round-trip transactions." The alleged conduct by APC and InPhonic represents a prime example of a round-trip transaction as APC provided credits to InPhonic, often paid in cash, with the understanding, which was ostensibly communicated in an unwritten and undisclosed agreement, that InPhonic would pay back the credits through similar improper transactions in the future. Often, such transactions are entered into to improve the reported operating results of both businesses. In this case, APC's motive may have been to lock in future business opportunities whereas InPhonic benefited from the understated cost of goods sold and understated losses.

When transactions are only entered into for the purpose of moving money between entities to achieve an accounting result and otherwise lack economic substance, they are commonly referred to as "round-trip transactions."

Due to the differing accounting treatments, both companies presented balance sheets reporting that they were owed monies from the other, an outcome not consistent with the transaction at issue. For APC, the amounts advanced as potentially fabricated credits were treated as loans receivable, fairly reflecting the asserted intent of the parties. For InPhonic, the credits due from APC and not yet paid in cash were treated as amounts receivable. Needless to say, each party purporting to be owed monies by the other demonstrates how accounting can become quite confusing when people don't report the true facts and substance of a transaction.

Detecting round-trip transactions can be very difficult because cash typically changes hands and therefore they often appear to be real transactions. In this situation, because cash didn't fully change hands, the balance due for the credits recorded on the books of InPhonic was subject to audit confirmation, a process that is designed to reveal the true economic substance of a transaction. Unfortunately, however, Mr. Greene controlled the confirmation response to InPhonic's auditors and, per the complaint, he told one of his employees to stamp his name and send the confirmation back to the auditors affirming that APC "owed" InPhonic approximately $5.5 million in credits.

The available facts are not sufficient to judge whether the confirmation should have been challenged by the auditors for issues including:

- *Was Mr. Greene, as the president of APC, the right person to send the confirmation?*
- *Did the credits have a possible future use and therefore was their stated value realizable?*
- *Was the collectability of the credits in question based on the financial position of APC?*

However, one thing that appears certain from reading the complaint is that, at a minimum, Mr. Greene allegedly "misled" the auditors and did so as part of his agreement with the senior vice president of InPhonic, thereby invoking the following section of the Sarbanes-Oxley Act of 2002:

> *"It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.*
>
> *In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation under this section."*

Without admitting or denying the allegations in the SEC's complaint, Mr. Greene consented to the entry of the final judgment permanently enjoining him from violating the antifraud provisions and ordering him to pay a $100,000 civil penalty. A final judgment against the senior vice president of InPhonic was previously entered by the Court with the defendant paying a settlement of $50,000.

The alleged conduct by APC and InPhonic represents a prime example of a round-trip transaction as APC provided credits to InPhonic, often paid in cash, with the understanding, which was ostensibly communicated in an unwritten and undisclosed agreement, that InPhonic would pay back the credits through similar improper transactions in the future.

SEC NEWS: SPECIAL ANNOUNCEMENTS AND UPDATES

During the quarter ended Dec. 31, 2013, the SEC announced several newsworthy items including the major developments described below.

SEC Announces First Deferred Prosecution Agreement With Individual

FOR IMMEDIATE RELEASE
2013-241
Washington D.C., Nov. 12, 2013 —

The Securities and Exchange Commission today announced a deferred prosecution agreement with a former hedge fund administrator who helped the agency take action against a hedge fund manager who stole investor assets.

Deferred prosecution agreements ("DPAs") encourage individuals and companies to provide the SEC with information about misconduct and assist with a subsequent investigation. In return, the SEC refrains from prosecuting cooperators for their own violations if they comply with certain undertakings.

According to the SEC's DPA with Scott Herckis—the agency's first with an individual—he served as administrator for Connecticut-based Heppelwhite Fund LP, which was founded and managed by Berton M. Hochfeld. With voluntary and significant cooperation from Herckis, the SEC filed an emergency enforcement action against Hochfeld in November 2012 for misappropriating more than $1.5 million from the hedge fund and overstating its performance to investors. The SEC's action halted the fraud and froze the hedge fund's assets and Hochfeld's personal assets, which are now being used to compensate defrauded investors. Last month, a federal court judge approved a $6 million distribution to harmed Heppelwhite investors.

"We're committed to rewarding proactive cooperation that helps us protect investors, however the most useful cooperators often aren't innocent bystanders," said Scott W. Friestad, an associate director in the SEC's Division of Enforcement. "To balance these competing considerations, the DPA holds Herckis accountable for his misconduct but gives him significant credit for reporting the fraud and providing full cooperation without any assurances of leniency."

According to the DPA, Herckis served as the fund's administrator from December 2010 to September 2012, when he resigned and contacted government authorities with his concerns about Hochfeld's conduct and certain discrepancies in Heppelwhite's accounting records. Herckis voluntarily produced voluminous documents and described to the SEC how Hochfeld was able to perpetrate his fraud. As a result, the SEC was able to file the emergency action within weeks.

Under the terms of the DPA, which states that Herckis aided and abetted Hochfeld's securities law violations, Herckis must comply with certain prohibitions and undertakings. Herckis cannot serve as a fund administrator or otherwise provide any services to any hedge fund for a period of five years. He also cannot associate with any broker, dealer, investment adviser, or registered investment company. The DPA requires Herckis to disgorge approximately $50,000 in fees he received for serving as the fund administrator, which will be added to the Fair Fund that has been created to help compensate Heppelwhite investors. A second round of distributions from the Fair Fund is expected after additional money is collected for harmed investors through the sale of Hochfeld's personal assets, including a collection of antiques he paid for with stolen funds. ■

SEC Awards More Than $14 Million to Whistleblower

FOR IMMEDIATE RELEASE
2013-209
Washington D.C., Oct. 1, 2013 —

The Securities and Exchange Commission today announced an award of more than $14 million to a whistleblower whose information led to an SEC enforcement action that recovered substantial investor funds. Payments to whistleblowers are made from a separate fund previously established by the Dodd-Frank Act and do not come from the agency's annual appropriations or reduce amounts paid to harmed investors.

The award is the largest made by the SEC's whistleblower program to date.

The SEC's Office of the Whistleblower was established in 2011 as authorized by the Dodd-Frank Act. The whistleblower program rewards high-quality original information that results in an SEC enforcement action with sanctions exceeding $1 million, and awards can range from 10 percent to 30 percent of the money collected in a case.

"Our whistleblower program already has had a big impact on our investigations by providing us with high quality, meaningful tips," said SEC Chair Mary Jo White. "We hope an award like this encourages more individuals with information to come forward."

The whistleblower, who does not wish to be identified, provided original information and assistance that allowed the SEC to investigate an enforcement matter more quickly than otherwise would have been possible. Less than six months after receiving the whistleblower's tip, the SEC was able to bring an enforcement action against the perpetrators and secure investor funds.

"While it is certainly gratifying to make this significant award payout, the even better news for investors is that whistleblowers are coming forward to assist us in stopping potential fraud in its tracks so that no future investors are harmed," said Sean McKessy, chief of the SEC's Office of the Whistleblower. "That ultimately is what the whistleblower program is all about."

The SEC's first payment to a whistleblower was made in August 2012 and totaled approximately $50,000. In August and September 2013, more than $25,000 was awarded to three whistleblowers who helped the SEC and the U.S. Department of Justice halt a sham hedge fund, and the ultimate total payout in that case once all sanctions are collected is likely to exceed $125,000.

By law, the SEC must protect the confidentiality of whistleblowers and cannot disclose any information that might directly or indirectly reveal a whistleblower's identity. ■

SEC Rewards Whistleblower With $150,000 Payout

FOR IMMEDIATE RELEASE
2013-231
Washington D.C., Oct. 30, 2013 —

The Securities and Exchange Commission today announced an award of more than $150,000 to a whistleblower whose tips helped the agency stop a scheme that was defrauding investors.

The award recipient, who does not wish to be identified, provided significant information that allowed the SEC to quickly open an investigation and obtain emergency relief before additional investors were harmed. By law, the SEC must protect the confidentiality of whistleblowers and cannot disclose any information that might directly or indirectly reveal an identity.

The award amount represents 30 percent of the money collected by the SEC in the successful enforcement action, the maximum permitted under the law.

"This is continued momentum and success for the SEC's whistleblower program that is bringing our investigators valuable and timely information to stop ongoing frauds before additional investors can be harmed," said Sean McKessy, chief of the SEC's Office of the Whistleblower.

This is the sixth whistleblower to be awarded through the SEC's whistleblower program since it began two years ago. The largest award was announced earlier this month when a whistleblower was awarded more than $14 million. ■

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ABOUT Floyd Advisory
Floyd Advisory is a consulting firm providing financial and accounting expertise in Business Strategy, Valuation, SEC Reporting, and Transaction Analysis.

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