Floyd Advisory

Summary of Accounting and Auditing Enforcement Releases for the Year Ended December 31, 2016

ANNUAL REPORT 2016

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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, 2016.

As an independent consulting firm with financial and accounting expertise, 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 which was established to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As such, the actions they take and the releases they issue provide very useful interpretations and applications of the securities laws.

SEC releases concerning civil litigation and administrative actions identified as related to "accounting and auditing" are particularly important for those involved in financial reporting. Our objective is to summarize and report on the major items disclosed in the AAERs, while also providing valuable insights for our readers.

We welcome your comments and feedback; especially requests for any additional analysis you would find helpful.

Floyd Advisory
JANUARY 2017

Highlights

- The era of Mary Jo White as Chair of the SEC ends with a record-setting number of enforcement actions in the year 2016. Independent enforcement actions saw an overall increase of over 60% since her tenure began in 2013.

- 2016 AAERs represent less than 13% of SEC enforcement actions for the year, down from their highest percentage in the last 10 years of 35% in 2007.

- Rule 102(e) Violations led all groups of AAERs for the year 2016, representing just over 50% of the releases. The 55 releases named 16 audit firms and 82 individuals, including 31 audit partners.

- The decline in the number of comment letters issued each year by the SEC to its filers continued in 2016, reaching its lowest level since 2005.

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"). The disclosed AAERs are intended to highlight certain actions and are not meant to be a complete and exhaustive compilation of all actions that may fit into the definition above.

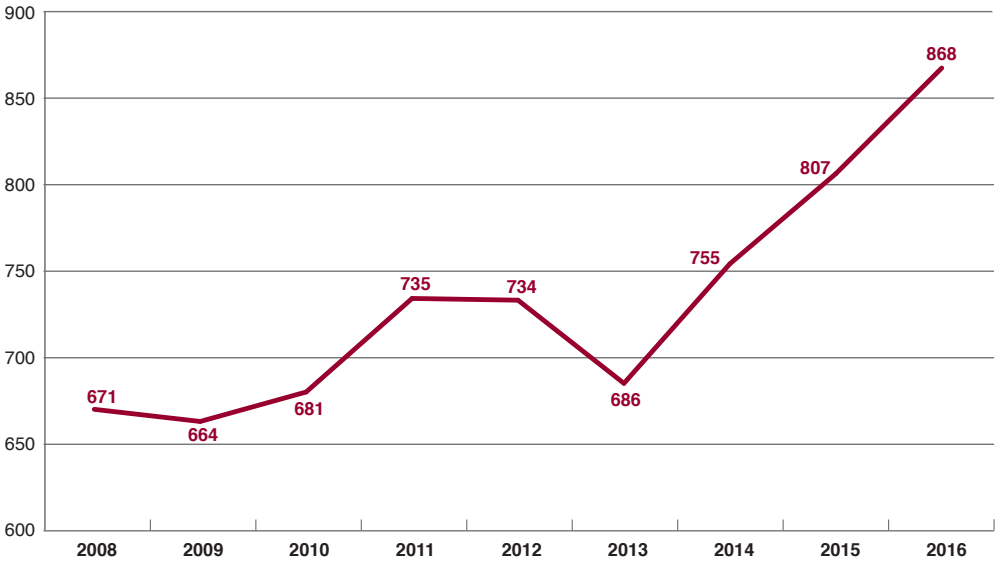
To meet our objective of summarizing the major items reported in the AAERs, we reviewed those releases identified and disclosed by the SEC on its website, www.sec.gov.

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). Note that 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.

SEC Enforcement Activity for the Year Ended December 31, 2016

Before reporting on the 2016 population of AAERs, we summarize the SEC's overall enforcement in order to provide insights into the trends and types of actions receiving the most attention. As reflected in the chart below, the volume of actions filed for the year ended September 30, 2016 increased approximately 8% from 2015 to 2016, and approximately 27% from 2013 to 2016.

Total SEC Enforcement Actions
For the Years Ended September 30,



Within the 868 enforcement actions, 548 are independent, or new, actions for violations of Federal securities laws. The remaining 320 actions are related to either delinquent filings or administrative proceedings arising from previously announced actions.

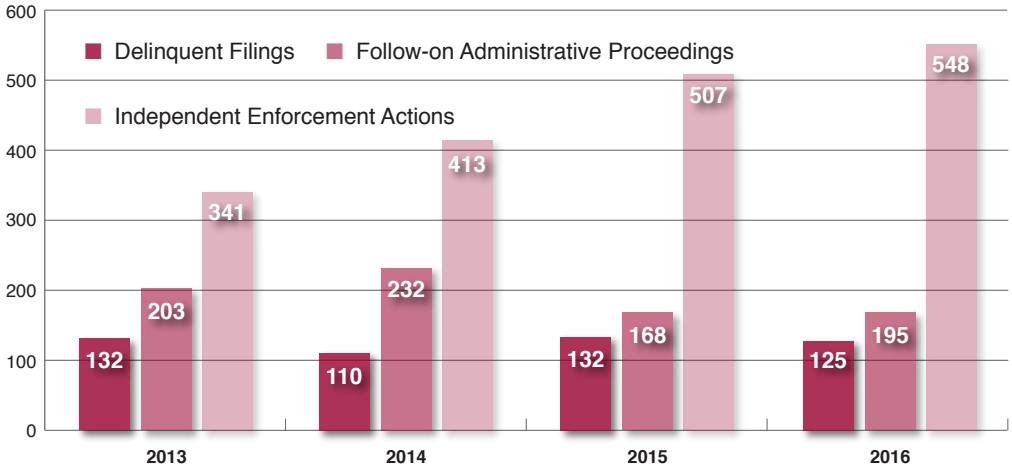
The next chart illustrates the trends in independent actions as well as the trends in delinquent filings and follow-on proceedings for the four years ended September 30, 2016. Of significance, the rise in actions for the year ended September 30, 2016 is largely due to the increase of independent actions. Notably, the 61% increase in independent actions between 2013 and 2016 corresponds to Mary Jo White's term as SEC Chair.

"By every measure, the SEC's enforcement program has been a resounding success. While numbers are a small part of the story, in the last three fiscal years, we have brought record numbers of enforcement actions, obtained unprecedented monetary remedies in the billions of dollars, and returned hundreds of millions of dollars to harmed investors."

Chair Mary Jo White
U.S. Securities and Exchange Commission
New York, NY
November 18, 2016

A New Model for SEC Enforcement: Producing Bold and Unrelenting Results

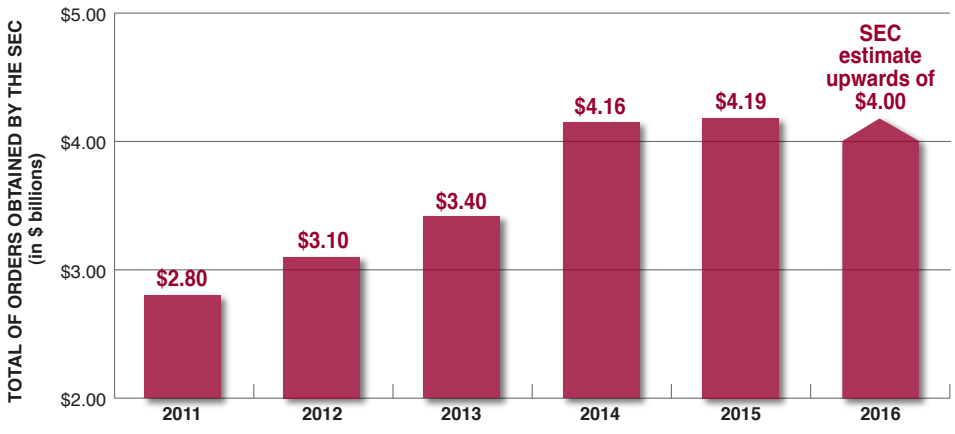
SEC Independent Actions
For the Years Ended September 30,



SEC Disgorgement and Penalties: Another $4 Billion Year

Disgorgement is used by the SEC to deny wrong-doers of their ill-gotten gains and to discourage future misconduct or violations of securities regulations. Under the Securities Exchange Act of 1934, the SEC has the authority to require respondents to remit any amounts received from inappropriate conduct, including calculated interest, as part of administrative proceedings. The SEC has not released a final amount of disgorgement and penalties ordered for FY 2016, but has confirmed that the figure exceeds $4 billion for the third consecutive year.

SEC Disgorgement and Penalities
For the Years Ended September 30,



Amounts recovered from respondents may be returned to harmed investors or to the United States Treasury, and the SEC or a court may appoint a non-governmental entity such as a receiver or distribution agency to oversee the collection or administer the disbursement of the funds. Of significance, the year-over-year increase in disgorgement aligns with the year-over-year increase in independent enforcement actions which represent newly originated enforcement actions for each fiscal year.

"While numbers tell a small part of the story, they provide some context for the marked increase in activity. The Commission is bringing actions against more municipal issuers and public officials. For example, since the beginning of 2013, the Commission has brought enforcement actions against 76 state or local government entities (including 4 U.S. states), 13 obligated persons and 16 public officials. In contrast, for the entire 10 year period from 2002 to 2012, there were enforcement actions brought against 6 government entities, 6 obligated persons and 12 public officials."

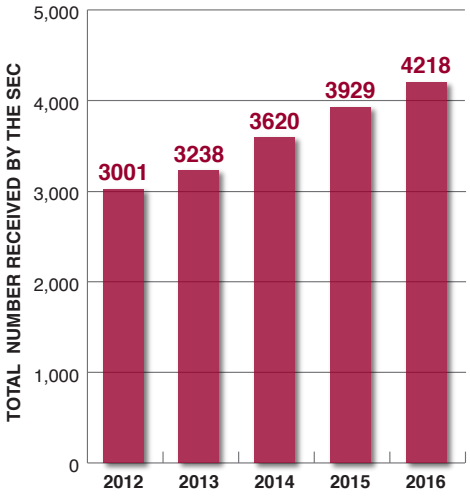
Andrew Ceresney
Director of the SEC's Division of Enforcement
Washington, D.C.
October 13, 2016

The Impact of SEC Enforcement on Public Finance
Keynote Address at Securities Enforcement Forum 2016

Whistleblower Program Allegations

In FY 2016, the SEC's Office of the Whistleblower (OWB) received a total of 4,218 allegations of wrongdoing. This is approximately 40% greater than the number received in FY 2012. The chart on the right illustrates the growth in whistleblower allegations for the five years ended September 30, 2016.

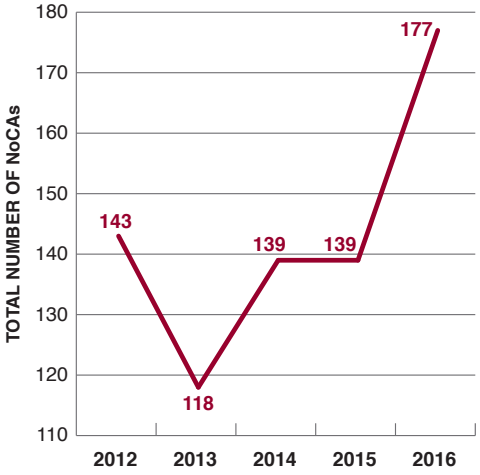
Whistleblower Allegations
For the Years Ended September 30,



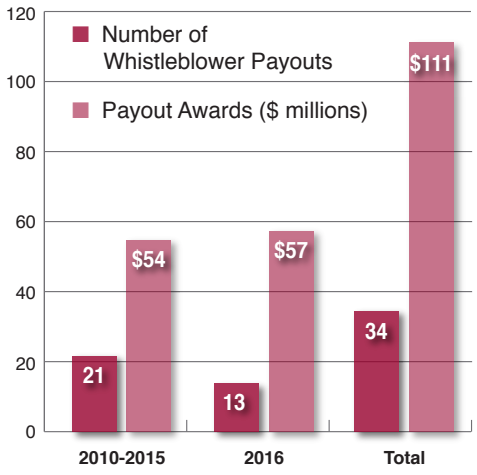
The trend in Notices of Covered Actions ("NoCA") is beginning to reflect a similar growth pattern. A Notice of Covered Action ("NoCA") is a public announcement by the SEC indicating that whistleblowers may be eligible for a payout in a particular case. OWB posts a NoCA on its website for each Commission action where a final judgment or order, by itself or together with other prior judgments or orders in the same action, results in monetary sanctions exceeding $1 million. To be eligible for a payment, an individual must have contributed substantive information that aided in the SEC investigation. The chart to the left below illustrates the change in Notices of Covered Actions for the five years ended September 30, 2016.

The sharp increase in NoCAs in 2016 parallels the OWB's significant payout volume for FY 2016. The OWB awarded over $57 million to 13 whistleblowers this year alone. This exceeds the total monetary award distributed by the OWB in all of the program's previous years combined. The OWB was established in July of 2010 as part of the Dodd-Frank Act. The Dodd-Frank Whistleblower program began in August of 2011 and has paid out over $111 million to 34 whistleblowers since its inception. As shown on the right below, the FY 2016 payout activity accounts for over a third of the program's historical payouts to whistleblowers and half of the total monetary awards in the program's history.

Notices of Covered Action
For the Years Ended September 30,



Dodd-Frank Whistleblower Program Historical Awards



"The whistleblower program has had a transformative impact on enforcement and that impact will only increase in the coming years as the program becomes more well-known and the significant rewards of participating in it become clearer to whistleblowers. … At the same time, we must acknowledge that it is not easy to be a whistleblower. Many financial and psychological barriers remain—barriers we at the SEC have taken aim at in order to change corporate attitudes and enhance protections for whistleblowers."

Chair Mary Jo White
U.S. Securities and Exchange Commission
New York, NY
November 18, 2016

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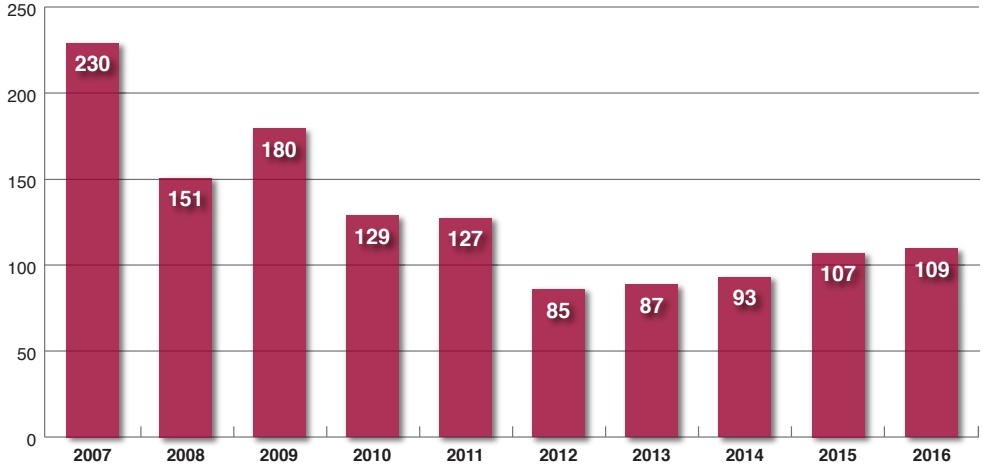
AAERs for the Year Ended December 31, 2016: Major Observations and Insights

For the year ended December 31, 2016, the SEC issued 109 AAERs, continuing the trend of increasing volumes for AAERs reported during each of the four previous years. However, the volume remains lower than the AAERs issued annually by the SEC from 2007 until 2011.

Looking Back at Total AAERs in Preceding Years

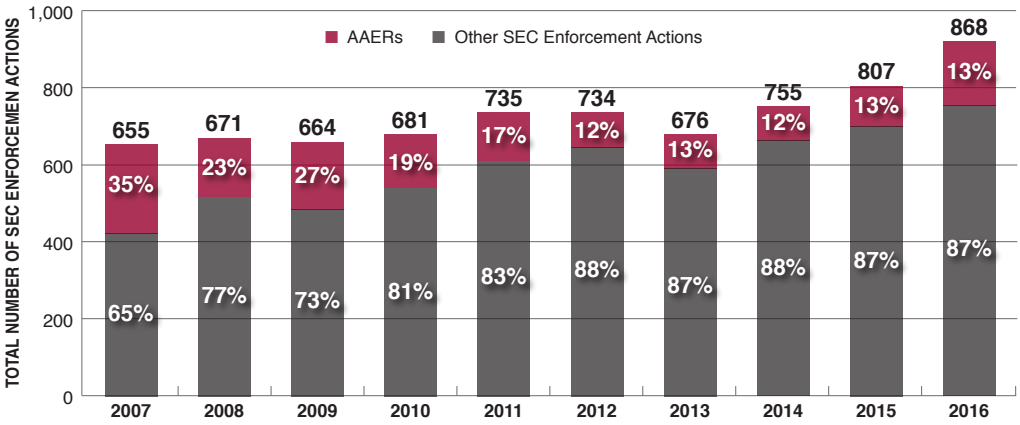
For the Periods January 1 – December 31,



AAERs highlight enforcement actions related to auditing and accounting matters and the SEC determines each enforcement release's placement into the AAER subcategory. Interestingly, the total rise in SEC enforcement actions has not resulted in a proportionate increase in AAERs.

The table below illustrates how the percentage of enforcement actions designated as AAERs has diminished over the years from 2007 to 2016. In 2007, AAERs comprised 35% of all enforcement actions. Despite the steady increase in enforcement actions designated as AAERs each year since 2012, their percentage of total enforcements actions has remained at around 13%.

AAERs as a Percentage of Total SEC Enforcement Actions



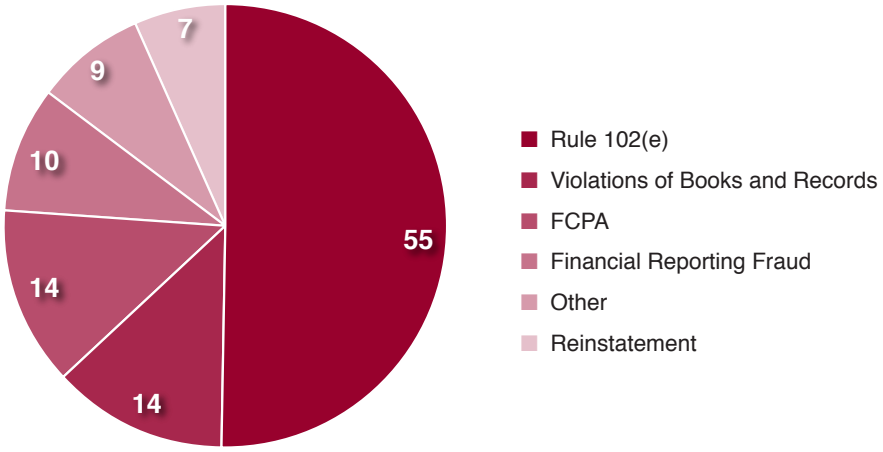
"…compliance personnel must keep it simple and intuitive when developing policies and procedures, the need to ensure that personal responsibility is not denigrated by the rise of technology, the growing complexity of firms, their operations and their products and services, and the need to appreciate and worry about what you don't know as you evaluate potential risks."

Andrew J. Donohue
SEC Chief of Staff
Washington, D.C.
October 19, 2016

Remarks at the National Society of Compliance Professionals 2016 National Conference

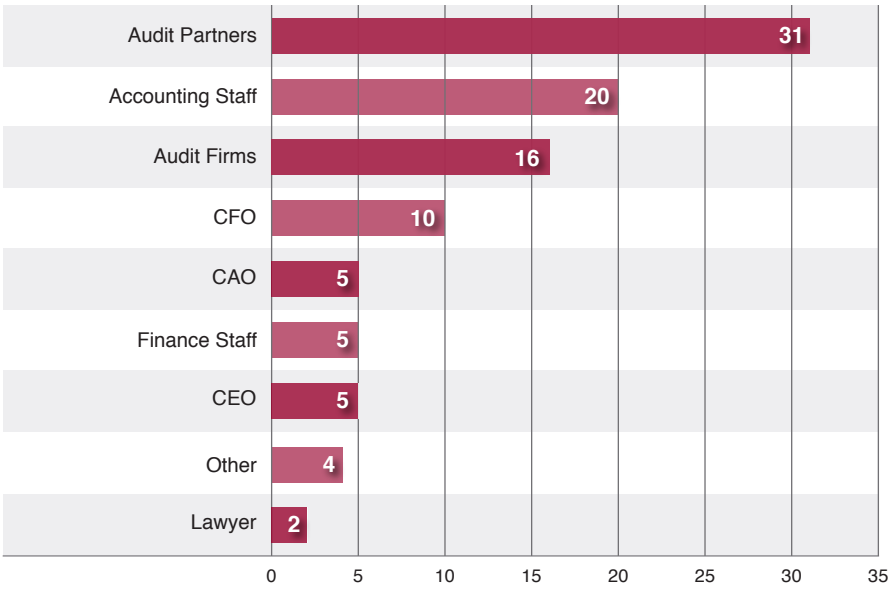
To evaluate the type of enforcement action behind each of the AAERs issued in 2016, we sorted the releases into major categories: Rule 102(e) Actions, Violations of Books and Records, Financial Reporting Frauds, Foreign Corrupt Practices Act violations ("FCPA"), Reinstatements, and Other. The chart below illustrates the number of AAERs in each category in 2016.

2016 AAERs by Category



Within the AAERs, approximately half of the actions brought forth by the SEC are suspensions or disbarments from practicing before the SEC under SEC Rule of Practice 102(e). These can be temporary or permanent and can be levied against either an individual working at a firm or against the firm as a whole. The chart below shows the parties named in 102(e) actions in 2016. During 2016, more audit partners and audit firms received 102(e) actions than CEOs, CFOs, CAOs, finance staff, and accounting staff combined. Of note, more than one individual or firm can be named as a respondent in a single release.

Rule 102(e) Enforcement Actions by Respondent's Role
For the Year Ended December 31, 2016



"Holding individuals liable for wrongdoing is a core pillar of any strong enforcement program. A company, after all, can only act through its employees, and to have a strong deterrent effect on market participants, it is absolutely critical that responsible individuals be charged and that we pursue the evidence as high as it can take us. I have obviously recognized the importance of focusing on individuals since my early days as a prosecutor, and the Commission's actions over the past three plus years show the priority that we are placing on establishing individual liability."

Chair Mary Jo White
U.S. Securities and Exchange Commission
New York, NY
November 18, 2016

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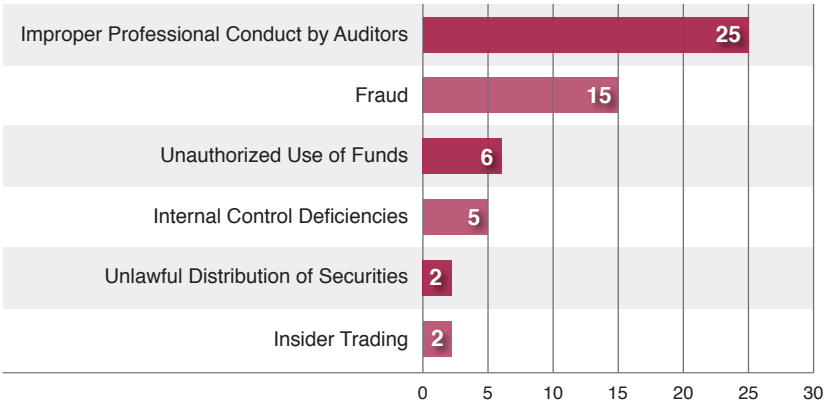
The following chart categorizes the 55 102(e) actions by the offense that triggered each action. The high volume of instances of improper professional conduct by auditors aligns with the fact that Audit Partners were the leading recipients of 102(e) actions during 2016.

Rule 102(e) Enforcement Actions by Category
For the Year Ended December 31, 2016



The 2016 AAERs: Summary of Financial Reporting Issues

To report on the frequency of financial reporting issues involved in 2016 AAERs, we identified the accounting problem(s) in each AAER based on the classification definition below.

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

As shown in the chart that follows on the next page, balance sheet manipulation and errors represented the most common financial reporting issue in the 2016 AAER population. Importantly, as we described in the "Our Process and Methodology" section, we record each accounting problem identified in the release as a separate item. Therefore many actions which involve improper revenue recognition, manipulation of reserves, and the intentional misstatement of expenses also have a balance sheet impact.

"During our investigations, we have enhanced our focus on acquiring admissible—and persuasive—evidence of the underlying elements that we will have to prove at trial, so that whenever possible, we produce a trial-ready record that can be used to prevail at trial or to secure a strong settlement. We also have enhanced our trial capacity, increasing our hiring of attorneys who have significant trial experience, often as criminal prosecutors."

Chair Mary Jo White
U.S. Securities and Exchange Commission
New York, NY
November 18, 2016

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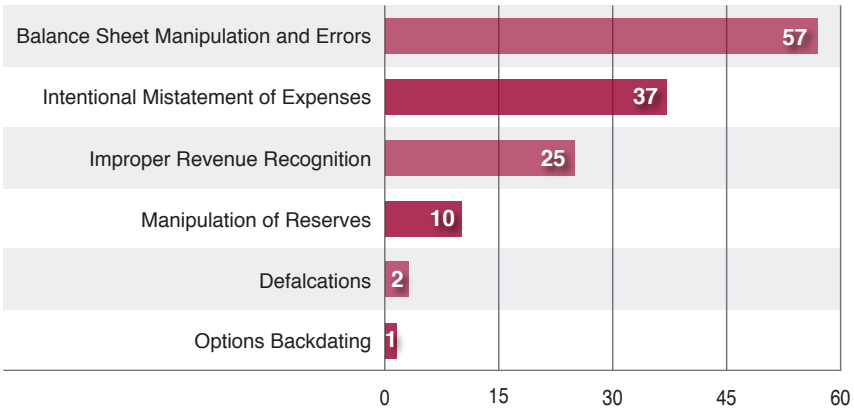
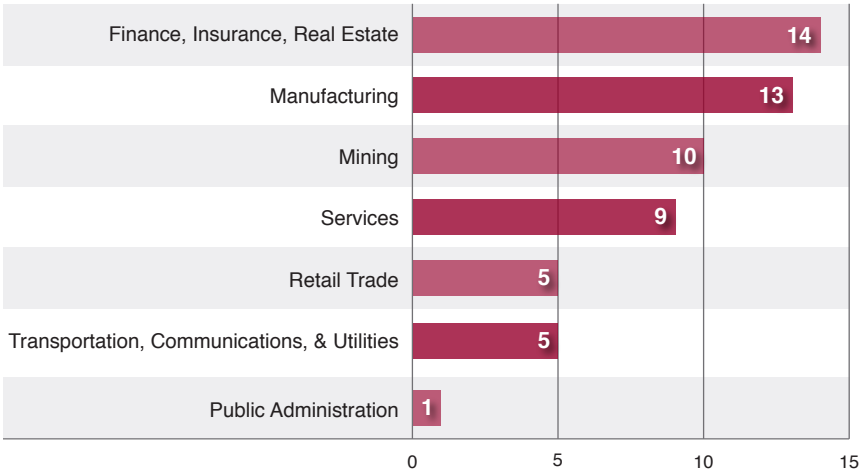
Financial Reporting Issues Identified in 2016 AAERs



Balance Sheet Manipulation and Errors

Misstatement on the balance sheet, whether intentional or negligent, is the most prominent issue identified in the actions brought by the SEC in the AAERs. The chart below shows an industry classification of the accused firms in the year 2016. As reflected in the chart, Finance, Insurance & Real Estate was the leading industry category, responsible for nearly one quarter of the instances of balance sheet manipulation or errors. The manufacturing industry was a close second.

Industry Analysis: Balance Sheet Manipulation and Errors
For the Year Ended December 31, 2016



We reviewed the 57 instances of balance sheet manipulation and analyzed each occurrence based on the error that was committed. Fair value overstatement was the most common error, responsible for approximately one-third of the total balance sheet manipulation instances. The second most common error that occurred was improper payments. Notably, all instances of improper payments were FCPA violations.

SEC and PCAOB Auditing-Related Enforcement and Disciplinary Actions

The SEC and PCAOB share the responsibility of taking action against auditors who violate SEC codes and professional standards. The chart below illustrates the trending increase in SEC and PCAOB Auditor-Related Enforcement and Disciplinary actions over the past seven years.

"Concepts of fundamental fairness and "guilt is individual" rightly run deep in our jurisprudence. But, given the seemingly intractable persistence of serious corporate wrongdoing, the time for deciding whether to impose greater accountability, by expanding the reach of our laws, would seem to be at hand. If we are to strengthen deterrence and incentivize true change in the culture and behavior of our financial institutions, we need to make the difficult decision of whether to consider legislation, appropriately calibrated, to reach further into the C-Suite for accountability."

Chair Mary Jo White
U.S. Securities and Exchange Commission
New York, NY
November 18, 2016

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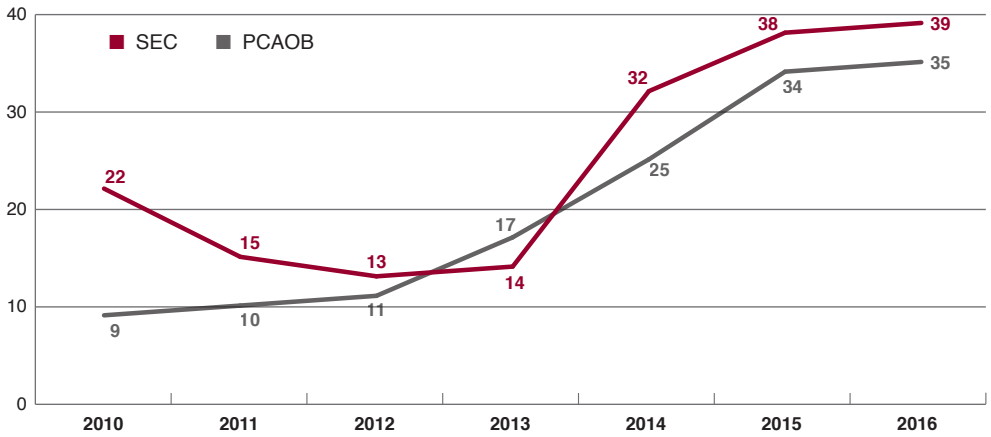
SEC and PCAOB Auditor Enforcement and Disciplinary Actions
For the Years Ended December 31, 2016

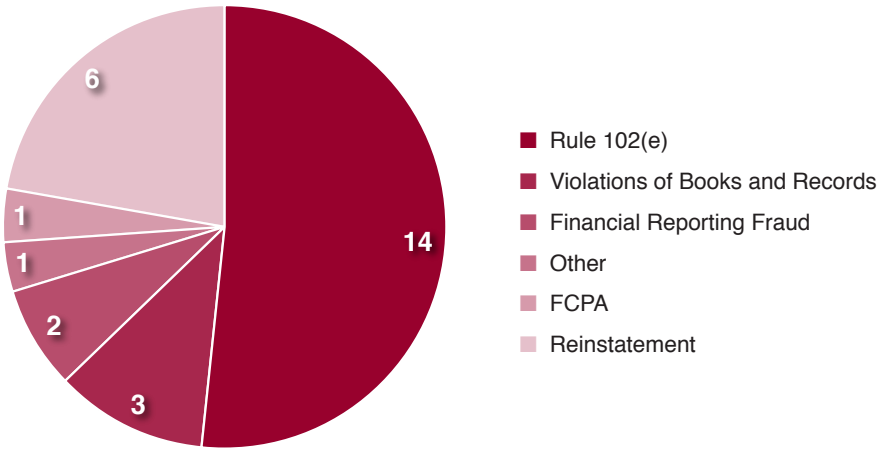


Overview of Q4 2016 AAERs

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 chart below illustrates the number of AAERs that fell into each category of violation during the fourth quarter of 2016. Rule 102(e) violations dominated the releases in Q4, accounting for just over 50% of the volume.

Q4 2016 AAERs by Category



Among these enforcement categories, our classification of balance sheet manipulation and errors remains the most common financial reporting issue in Q4 2016, accounting for 48% of the identified issues. Intentional misstatement of expenses accounted for 26%, and manipulation of reserves accounted for 15%, and improper revenue recognition made up the other 11%. See the next chart on the following page for our categorization of financial reporting issues in Q4 2016.

"Implementation of new auditing standards naturally starts with thoughtful attention by auditors who will have direct responsibility in the implementation effort. Ongoing monitoring by regulators also plays a critical role in evaluating compliance with new standards. However, other stakeholders, including audit committees, management, investors and academics should consider how they can contribute to help maximize the intended benefits and minimize potential unintended consequences of new auditing standards."

Jennifer L. Todling
Professional Accounting Fellow,
SEC Office of the Chief Accountant
Washington, D.C.
December 5, 2016

Remarks before the 2016 AICPA Conference on Current SEC and PCAOB Developments

Financial Reporting Issues Identified in Q4 2016 AAERs

A Look Inside the Division of Corporation Finance

SEC investigations and enforcement actions originate from various sources including registrants' self-reporting, media attention, whistleblower allegations, auditor reporting, and the SEC's own sleuthing through its comment letter process within the Division of Corporation Finance.

"Corp Fin," as the division is commonly called, is required to review the disclosures of all companies and investment company portfolios reporting under the Exchange Act at least once every three years as it is stipulated by the Sarbanes-Oxley Act. When Corp Fin performs a review, it often raises questions about disclosures, accounting policies and treatments. These questions are delivered in communications referred to as "comment letters." As mentioned above, how registrants respond to or resolve financial reporting and disclosure matters in answer to these comment letters and the SEC's ensuing review process are often a source for enforcement actions.

"In general, rulemaking and policies are designed to improve disclosure, facilitate the flow of important information to investors and the public, promote capital formation, improve governance, promote high-quality accounting standards, enhance the accountability of financial intermediaries and other market participants, and strengthen the structure of the trading markets, among other goals. … In addition, the agency recognizes that regular reviews of Commission regulations and rulemaking processes are necessary to confirm that intended results are being achieved."

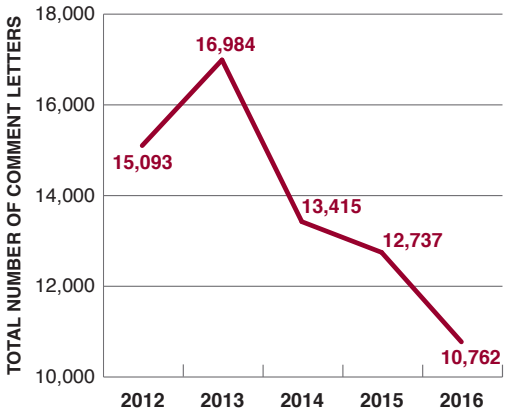
U.S. Securities and Exchange Commission

FY 2017 Congressional Budget Justification, FY 2017 Annual Performance Plan, FY 2015 Annual Performance Report

Performance Summary by Strategic Goal and Strategic Objective, Page 23

Noting the relationship between Corp Fin and the SEC's Enforcement Division, we compiled historical data on the number of comment letters issued by SEC staff to SEC filers, Corp Fin's full-time equivalents, and the division's funding, as well as the span of Corp Fin's filing review process. Of note, we identified that the number of comment letters over the last five years have dropped by approximately 29%, while the number of reported enforcement actions rose by approximately 18% during the same period. The chart on the right reflects the drop in comment letters issued.

Comment Letters Issued by the SEC
For the Years Ended September 30,

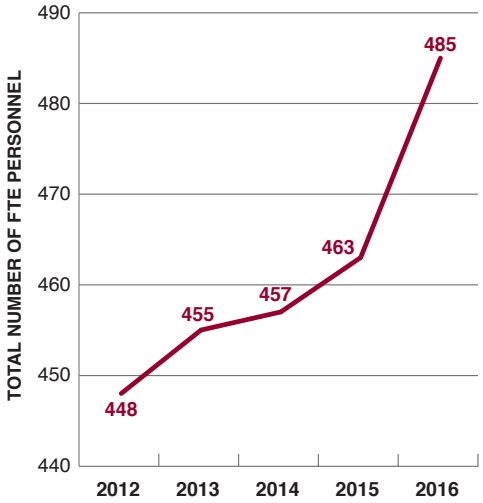


Keith Higgins, Director of the Division of Corporation Finance, noted, "The staff of the Division of Corporation Finance—including me—needs to be mindful of the influence that our comment process has to shape company disclosure and use that influence wisely." He added, "As a general rule, when we are reviewing a filing, we issue comments when we believe a company may not be in compliance with a line-item requirement and when we believe information may not be included that would be material to an investor's investment or voting decisions. However,

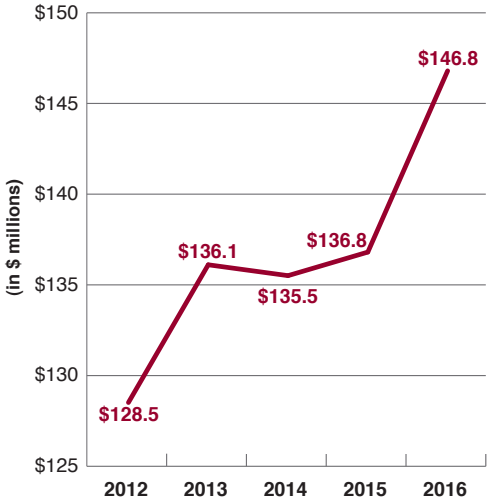
just because we issue a comment, it does not mean that we have concluded the requested information is material. It is the beginning of what we hope is a dialogue. A response of *'we don't believe the information is material, but we'll include it to clear the comment and move on'* is not a desirable result—for the company, investors or us. We also must keep in mind that frequently the default position, as I previously noted, is to include the disclosure. So the Division needs to be judicious in the comments that it issues, and we hope that companies will not include immaterial information just for the sake of clearing a comment."

Remarkably, while comment letters were decreasing in volume, the total personnel and funding for Corp Fin during this same five-year period rose by 8% and 14% respectively. The personnel and funding information reported below reflects actual amounts for all years except fiscal year 2016, which is based on Corp Fin's budget requests.

Full-Time Equivalents (FTEs)
SEC Division of Corporation Finance
For the Years Ended September 30,

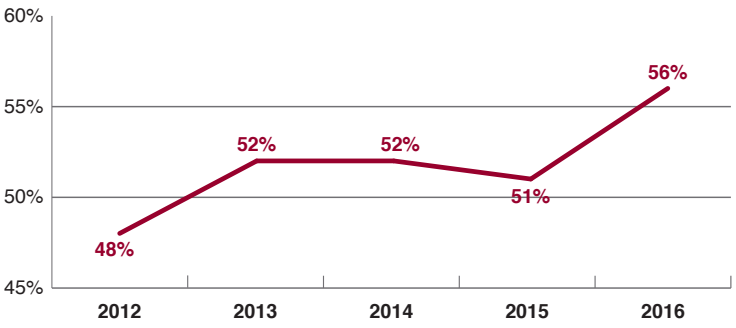


Funding
SEC Division of Corporation Finance
For the Years Ended September 30,



Significantly and consistent with having more personnel, Corp Fin has reviewed the disclosures of an increasing percentage of public companies and investment companies over the last five years, far exceeding the Sarbanes-Oxley requirement.

Percentage of Public Companies and Investment Companies with Disclosures Reviewed by the SEC Division of Corporation Finance
For the Years Ended September 30,



"Through disclosure reviews and examinations of broker-dealers, investment advisers, self-regulatory organizations (SROs) and other market participants, the SEC seeks both to detect violations of the securities laws and rules and to foster strong compliance and risk management practices within these firms and organizations. The SEC's Enforcement program also investigates and prosecutes violations of the law, with the aims of holding wrongdoers accountable, returning funds to harmed investors whenever possible, and building deterrence against future violations."

U.S. Securities and Exchange Commission

FY 2017 Congressional Budget Justification, FY 2017 Annual Performance Plan, FY 2015 Annual Performance Report

Performance Summary by Strategic Goal and Strategic Objective, Page 31

This data raises several observations and unanswered questions, including the following;

- It appears that the increase in personnel has played a role in an increase in the review of filings; however, is it actually possible they are finding less on which SEC staff can comment or question?
- Have enhanced disclosures and improved internal controls improved the transparency and fairness of financial reporting and disclosures practices such that fewer comments or questions are being raised?
- Have the analytical tools developed by the Division of Economic and Risk Analysis (DERA) to identify reporting risks and concerns made the comment letter process more efficient and targeted, thereby requiring fewer yet more focused letters?
- Is it necessary and is it value added for the SEC to exceed the "once every three years" review process when noting the drop in the number of comment letters issued?
- Due to advanced technology and other financial reporting improvements, is there an opportunity for cost reduction in the Division of Corporation Finance?

The trends and facts are fascinating. The answers to the questions raised are complex and will require greater data analysis.

"The agency's trial record is impressive on any scale, but all the more so given the difficulty and complexity of the cases we try. Unlike our colleagues at the Department of Justice, we generally proceed without the benefit of cooperators, wiretaps, and many of the other tools prosecutors have. Our litigated cases, which are typically technically complex, also require us to heavily rely on circumstantial evidence, confront hostile witnesses, and refute testimony by the defendant—a much rarer occurrence in criminal cases."

Chair Mary Jo White
U.S. Securities and Exchange Commission
New York, NY
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A New Model for SEC Enforcement: Producing Bold and Unrelenting Results

Notable Q4 2016 AAER for "Recommended Reading"

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 this particular release as earning the distinction of "recommended reading" for our clients.

Accounting and Auditing Enforcement Release No. 3824 / November 17, 2016, Administrative Proceeding File No. 3-17684, In the Matter of JP Morgan Chase & Co., Respondent.

Investment bankers at JPMorgan's subsidiary in Asia, JPMorgan Securities (Asia Pacific) Limited ("JPMorgan APAC"), allegedly created a special client referral hiring program to leverage the promise of well-paying, career building JPMorgan employment for the relatives and friends of senior officials with its clients in order to assist JPMorgan APAC in obtaining or retaining business. The special hiring program ("Client Referral Program") was created at JPMorgan APAC for referred candidates, allowing them to bypass the firm's normal hiring process and was made available exclusively to candidates referred by clients, prospective clients, or foreign government officials ("Referral Hires"). Per the SEC's claim, Non-referral JPMorgan APAC hires were subjected to a rigorous screening process and competed against other candidates for a limited number of positions.

Also according to the SEC, Referral Hires did not compete against other candidates based on merit and, in most instances, were less qualified than those employees hired through the firm's non- referral hiring programs. Instead, Referral Hires were hired based on direct or potential links to investment banking revenue that could be generated from the referring client in exchange for the hire. Referral Hires whose relationships generated sufficient revenue for JPMorgan APAC were allegedly offered longer-term jobs, while others were given shorter terms of employment unless, according to the SEC, the referring client offered additional business to the firm. The claim states that in 2010 and 2011, JPMorgan APAC employees created spreadsheets to track the revenue to the firm from clients whose candidates were hired through the Client Referral Program.

Over this seven-year period, JPMorgan allegedly hired approximately 200 interns and full-time employees at the request of its APAC clients, prospective clients, and foreign government officials. This included nearly 100 candidates allegedly referred by foreign government officials at more than twenty different Chinese SOEs (state owned enterprises). Per the release, a number of the Referral Hires resulted in business for JPMorgan APAC. The referring SOEs allegedly entered into transactions totaling more than $100,000,000 in revenue for JPMorgan APAC or its affiliates during this period. The SEC also claims that JPMorgan hired referrals from more than 10 different government agencies. JPMorgan APAC bankers allegedly leveraged connections with these government agencies to assist other JPMorgan APAC clients and the firm itself in navigating complicated regulatory landscapes.

JPMorgan APAC employees apparently understood that hiring relatives and friends of foreign government officials for the purpose of obtaining or retaining business posed the risk of violating the FCPA. Nonetheless, the SEC alleges that JPMorgan APAC investment bankers and supporting personnel often provided inaccurate or incomplete information as part of the legal and compliance reviews designed to prevent violations or withheld key information so that Referral Hires would pass compliance review.

Interestingly, programs like JPMorgan's Referral Hires, while arguably very unfair to candidates lacking personal connections and raising ethics concerns, appear commonplace in the banking industry according to the AAER, and likely also exist in some form in many other industries. However, when done for the purpose of securing or maintaining foreign government relationships and contracts, the practice of hiring candidates without applicable merit runs afoul of the FCPA.

Even if one were to argue that the employment relationship was a bargained for exchange of wages for services, based on the discussion in the AAER, the incremental benefit received by the employment candidate in foregoing the competitive screening and interview process is of significant value and may be directly connected to the SOE business relationship.

Businesses are well advised to take a look at their hiring practices for client-directed employee referrals to ensure they don't have a similar extension of what may have started as an ordinary business practice, but creates risks and potential violations of the law when foreign government officials and family members are involved.

"…'anything of value' is a broad term and is not limited to cash or tangible gifts... There is no question that JPMorgan itself recognized that employment given at the request of a foreign official can be a thing of value under the FCPA, providing tangible or intangible benefits to a foreign official. When these benefits are given to influence a foreign official in the performance of their official duties to assist an issuer in obtaining or retaining business, the FCPA is violated."

Andrew Ceresney
Director of the SEC's Division of Enforcement
Washington, D.C.
November 30, 2016

Keynote Speech, ACI's 33rd International Conference on the FCPA

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

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