



*Summary of Accounting and
Auditing Enforcement Releases
for the Quarter Ended
June 30, 2023*

Q 2 R E P O R T 2 0 2 3

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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’s (“SEC” or “Commission”) Division of Enforcement’s Accounting and Auditing Enforcement Releases (“AAERs”) for the quarter ended June 30, 2023.

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 continue to fulfill this commitment.

The Division of Enforcement at the SEC is a law enforcement agency established to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As such, the actions it takes and the releases it issues provide 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 interest. Our objective is to summarize and report on the major items reported in the AAERs, while also providing useful insights that the readers of our report will find valuable.

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

Floyd Advisory
JULY 2023

Highlights:

- The SEC released a total of 30 AAERs in Q2 2023, with nearly one-third categorized as Rule 102(e) Actions. This category continues to represent a significant percentage of AAERs each quarter, averaging 41% of total AAERs over the last eight quarters.
- This quarter, the SEC imposed penalties totaling more than \$87 million, including \$62 million against a technology company for violating the books and records and internal accounting controls provisions of the FCPA. During 2022, there was just one FCPA-related AAER; however, the number is on the rise this year, with two FCPA-related AAERs last quarter and three this quarter.
- This is the second quarter in a row in which the SEC did not issue any Reinstatements to individuals to appear or practice before the Commission. Prior to last quarter, the SEC issued at least one Reinstatement each quarter since Q2 2021.
- In our Recommended Reading section, we highlight one of five Financial Reporting Fraud AAERs this quarter in which company executives falsely inflated company revenue by approximately \$100 million over two years and embezzled millions more for their own personal use. This section provides an overview of the company, the scheme that occurred, the penalties and punishments assigned to those involved, as well as key considerations to help those in oversight roles avoid similar issues within their own organization.

OUR PROCESS AND METHODOLOGY

The AAERs issued by the SEC are defined as financial reporting-related enforcement actions concerning civil lawsuits brought in federal court and notices and orders concerning the institution and/or settlement of administrative proceedings. The 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 the releases identified and disclosed by the SEC on its website, www.sec.gov.

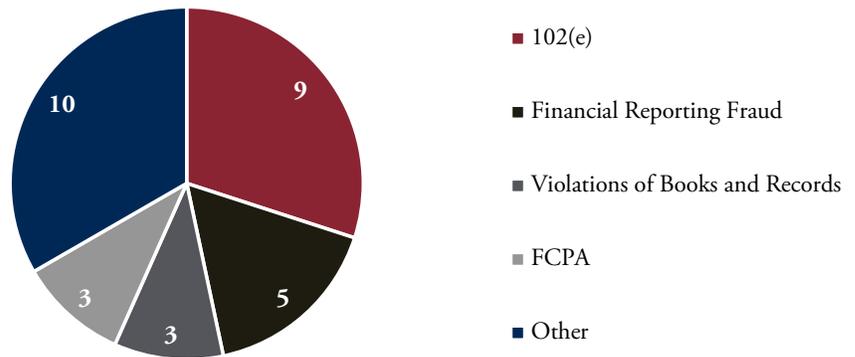
As part of our review, we gathered information and key facts, identified common attributes, and noted trends. Applying our professional judgment to the information provided by the SEC, we sorted the releases into major categories (i.e., Rule 102(e) Actions, Violations of Books and Records, Financial Reporting Fraud, Reinstatements to Appear or Practice before the SEC, Foreign Corrupt Practices Act (“FCPA”) Violations, and Other¹). When a release included more than one allegation, admission, or violation, we categorized the release based on the most significant issue. Based on this process and methodology, we prepared a database of the key facts contained in each release.

¹ AAERs categorized as “Other” are generally related to certain logistical aspects of SEC proceedings, such as orders regarding scheduling, decision extensions, status reports, and alternative methods of communication.

The Q2 2023 AAERs: Summary by Category and Insights from the Releases

The SEC released 30 AAERs during Q2 2023. Notably, AAERs categorized as “Other” led all other categories for the second quarter in a row, while Rule 102(e) Actions were the second most prevalent, as depicted in the graph below:

Q2 2023 AAERs by Category



“In the last two years, [the SEC] filed nearly 1,500 enforcement actions and conducted more than 6,000 examinations of registrants. [It] engage[s] with more than 40,000 registrants—asset managers, brokers, dealers, exchanges, fund complexes, public companies, and many more.”

Gary Gensler,
Chairman of the SEC
April 18, 2023
Testimony of Chair Gary Gensler
before the United States House
of Representatives Committee on
Financial Services

While our categorical breakdown is analytically useful, a closer look at examples of specific cases for each category provides a clearer understanding of the SEC’s areas of focus as an enforcement agency.

Rule 102(e) Actions

Nine AAERs related to Rule 102(e) Actions were released this quarter, totaling more than \$10 million in penalties. Rule 102(e) Actions involve the temporary or permanent censure and denial of the privilege of appearing or practicing before the SEC. Examples of the releases reported in this quarter’s Rule 102(e) Actions include the following:

- The Commission suspended a CFO for overstating the value of assets and withholding information from external auditors.*** According to the AAER, from 2016 through 2017, the CFO of a freight trucking company engaged in a fraudulent scheme to overstate the value of company assets by failing to both recognize impairment charges and record trucks classified as “held for sale assets” at market value. As a result of these improper accounting practices, the company filed materially false and misleading financial statements that overstated asset values, income before taxes, net income, and earnings per share. The original complaint further alleges that the CFO did not disclose certain information to the company’s external auditors in response to questions about the existence of an undisclosed third-party agreement. The CFO was suspended from appearing or practicing before the Commission as an accountant and may apply for reinstatement after three years. The CFO was also ordered to pay a civil money penalty of \$50,000 in a previous SEC release.

- ***The SEC suspended an individual serving as the sole officer, sole director, and controlling shareholder of a company for signing, certifying, and positing false and misleading financial statements.*** From at least 2014 through 2020, the sole officer, sole director, and controlling shareholder (the “individual”) of an environmental consulting company allegedly made false representations that the company’s financial statements were fairly presented in all material respects, including its financial condition, results of operations, and cash flows. The AAER also states that the individual allegedly falsely asserted that the financial statements were prepared in accordance with GAAP, by persons with the sufficient knowledge and financial skills to do so, and reported a license, for which the existence and value were unsupported, as a \$500,000 principal asset of the company for many years. The individual also made false and misleading statements to third parties, such as brokerage firms and transfer agents, and forged bank records to facilitate fraudulent transactions for his ultimate benefit. As a result, the individual has been suspended from appearing or practicing before the Commission as an accountant.
- ***The Commission suspended an individual serving as the president, chief compliance officer (“CCO”), and managing member of an investment adviser for breaching his fiduciary duty by engaging in fraudulent trade allocations.*** According to the AAER, from at least 2016 to 2017, the president, CCO, and managing member (the “individual”) engaged in a “cherry picking” scheme in which he allocated favorable trades to a new lucrative client, while allocating unfavorable trades to two long-term clients. The individual’s new client earned positive returns and as a result, invested additional funds. At the same time, the individual earned substantial management fees from the initial favorable trades and the newly invested funds. The release states that the individual breached his fiduciary duty to his clients and is hereby suspended from appearing or practicing before the Commission. The individual may apply for reinstatement after five years.

Violations of Books and Records

This quarter we categorized three AAERs as Violations of Books and Records, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not warranting categorization as financial reporting fraud. A summary of one of the Violations of Books and Records releases this quarter is outlined below:

- ***The Commission imposed a cease-and-desist order against the CEO and CFO of an engineering and construction energy company for approving a forecast developed outside of the company’s regular process, resulting in inaccurate books and records.*** According to the release, in 2018, the engineering and construction energy company acquired another company and took over several contracts. Prior to the merger, the largest contract that the company was going to inherit became a “loss contract.” In other words, the total costs of project completion were estimated to exceed the contract price, determined through an estimate-at-completion (“EAC”) loss forecast, by \$160 million. Soon after the merger, in June 2018, the EAC loss forecast was estimated to be \$1.3 million as a result of expected cost increases as part of an execution strategy change. In July 2018, the EAC loss forecast was revised to \$1.1 billion, but one day later, management proposed an alternative \$490 million EAC loss forecast that was calculated outside of routine cost-estimating processes, using a methodology that was inconsistent with the regular process for a project of such complexity and magnitude. Despite having knowledge of this, the CEO and CFO approved the \$490 million EAC, and as a result, the company filed an inaccurate quarterly report in Q2 2018, and its related disclosures did not fairly present the company’s position. According to the release, in Q3 2018, an EAC loss forecast that was prepared consistent with the routing estimating process yielded a significantly higher loss increase. The CEO and CFO were ordered to pay civil penalties of \$100,000 and \$40,000, respectively.

“The SEC is committed to rooting out and stopping offering frauds targeting investors’ hard earned money.”

Monique C. Winkler,
Regional Director of the SEC’s San
Francisco Regional Office
June 30, 2023
SEC Charges Two Oregon Residents
and Their Related Entities with \$10
Million Ponzi-Like Scheme

Financial Reporting Fraud

Five AAERs were categorized as Financial Reporting Fraud during the quarter and accounted for more than \$4 million of penalties. Below is one example of a release within this category and a second release is described in our Recommended Reading section of this report:

- ***The SEC imposed a cease-and-desist order against a manufacturing and distributing company for fraudulent accounting practices that led to the reporting of materially false revenue amounts.*** The release alleges that from Q4 2017 through Q3 2018, a manufacturing and distributing company of cashless payment devices was under pressure to achieve sales targets, which led employees to engage in two fraudulent revenue recognition schemes. According to the release, company employees fabricated “bill and hold” sales transactions, a type of sale that is an exception to the standard revenue recognition criteria requirement for delivery to have occurred before recording revenue, and also intentionally shipped products that customers never ordered or wanted. As a result of these practices, the company overstated revenue by \$2.56 million in fiscal year 2017 and an additional \$2.05 million for the first three quarters of fiscal year 2018. The Commission acknowledged the company’s self-reporting of the issue and subsequent remedial efforts. The company was ordered to pay a civil money penalty of \$1.5 million.

FCPA Violations

The SEC issued three FCPA-related releases this quarter, resulting in nearly \$73 million in penalties. Below is a summary of two of the releases:

- ***A health technology company violated the books and records and internal accounting controls provisions of the FCPA through improper conduct in China.*** According to the release, from 2014 through 2019, employees of a Netherlands-based health technology company engaged in improper conduct in China to influence foreign officials in connection with the specifications of certain public tenders and increase the likelihood that the company’s products were selected in such public tenders. Furthermore, certain employees, distributors, and sub-dealers allegedly engaged in improper bidding practices by preparing additional bids with other manufacturers’ products to meet minimum requirements under Chinese public tender rules. As a result of this misconduct, the release states that the company was unjustly enriched by \$41 million. The Commission acknowledged the company’s cooperation and remedial efforts, such as performing an internal investigation and improving policies and procedures, however the company was ordered to pay disgorgement and prejudgment interest of \$47 million, as well as a \$15 million civil monetary penalty.
- ***A mining company violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA through a bribery scheme in Angola.*** The release alleges that from 2008 through 2014, a mining company paid commissions to a sales agent in Angola, despite subsidiary employees in the area knowing that those commissions would likely be used to bribe government officials on the company’s behalf. According to the release, the funds were ultimately diverted to a government official to influence the award of oil and natural gas service contracts. The release further alleges that the company lacked adequate internal controls related to the retention and payment of agents that interacted with government officials. The Commission considered the company’s cooperation, including, but not limited to, voluntarily producing relevant documents and terminating certain employees involved in the scheme, and ordered the company to pay disgorgement and prejudgment interest of \$5 million as well as a \$3 million civil money penalty.

“Even non-public, early-stage companies must be truthful in their representations, and when they fall short we will hold them accountable.”

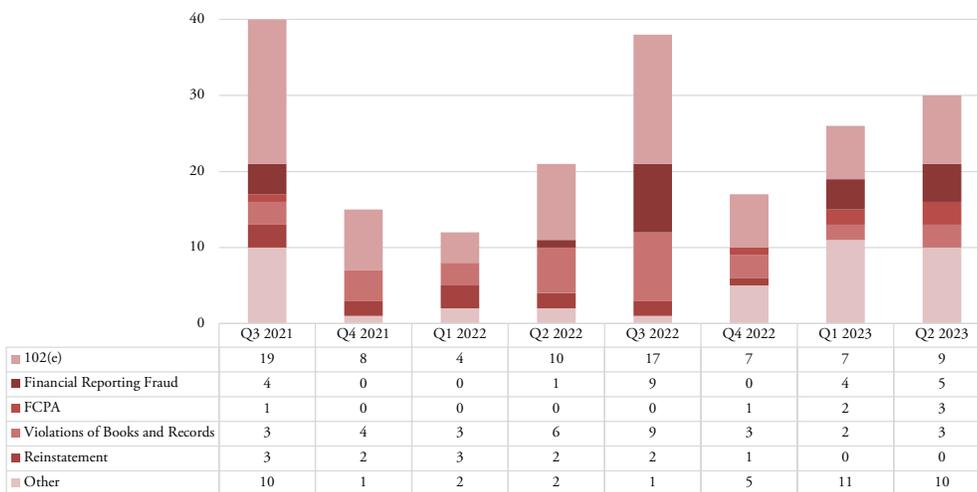
Gurbir S. Grewal,
Director, Division of Enforcement
April 4, 2023
SEC Charges Founder of Frank
with Fraud in Connection with
\$175 Million Sale of Student Loan
Assistance Company

Prior Period Comparison: Quarter to Quarter

As described in the section titled “Our Process and Methodology,” AAERs are intended to highlight certain actions, and they do not represent an exhaustive and complete compilation of all actions that fit into the definitions provided by the SEC for the various AAER classifications. With that said, comparisons of the number of AAERs between periods can be a useful gauge of the SEC’s activities.

The following chart maps quarterly totals for each category over the past eight quarters.

Quarter to Quarter AAER Comparison
Q3 2021 through Q2 2023



Overall, based on the data above and as mentioned previously, we made the following observations this quarter:

- The number of AAERs released in each quarter of 2023 continues to exceed the amount released in the respective quarters of 2022, with 30 AAERs in Q2 2023 as compared to 21 in Q2 2022;
- Rule 102(e) Actions continue to make up a significant percentage of the AAERs, averaging 41% of the total AAERs over the eight-quarter period;
- The number of FCPA releases has continued to rise from 2022, with three FCPA-related AAERs in Q2 2023; and
- For the second quarter in a row, there were no AAERs released related to Reinstatements, which has not occurred since Q1 2021.

Notable Q2 2023 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 these particular releases as earning the distinction of “Recommended Reading” for our clients. This quarter, we chose to highlight a release in which senior level executives intentionally defrauded their company, which resulted in jail time for the former CEO and left their external auditors under scrutiny by the company’s new management.

Accounting and Auditing Enforcement Release No. 4402 / April 25, 2023, In the Matter of SAExploration Holdings, Inc.

The SEC issued a Financial Reporting Fraud AAER this quarter related to the former CEO of a Houston-based seismic data company, SAExploration Holdings, Inc. (“SAE” or the “Company”) and his role, along with other senior level executives (“SAE Executives”), in falsely inflating Company revenue by approximately \$100 million and concealing a theft of millions of dollars. The matter arose in 2019 when it was discovered that the Company’s revenue in 2015 and 2016 was overstated by \$57 million and \$44 million, respectively, as a result of intentional acts by SAE Executives.

Below is a brief overview of SAE’s business, the scheme that occurred, the penalties and punishments assigned to those involved, as well as key considerations to help those in oversight roles avoid similar schemes within their own organization.²

About SAE

SAE, a previously publicly traded company, provides land and marine-based seismic acquisition services used by oil and gas companies. Its services include program design, planning and permitting, and recording and processing to identify and analyze drilling prospects.

In 2015, a large portion of SAE’s business was conducted with Alaskan Seismic Ventures, LLC (“ASV”). SAE Executives purportedly represented this customer to investors as legitimate and unrelated to SAE, however ASV was created and controlled by SAE Executives and allegedly operated out of a bedroom in an acquaintance’s residential home. ASV contracted with SAE to collect seismic data and then licensed it to customers. By doing this, SAE was able to recognize revenue once it sold the data to ASV, regardless of whether ASV had an actual end-customer for it. According to the SEC’s complaint against the CEO, ASV was key to the scheme that inflated SAE revenues and misappropriated Company funds.

“[T]he SEC is committed to holding officers and directors of public companies accountable for their violations of federal securities laws and regulations.”

Gurbir S. Grewal,
Director, Division of Enforcement
June 16, 2023
Statement on Jury’s Verdict in Trial
of Robert Hillis Miller

² This summary includes information from Accounting and Auditing Enforcement Release No. 4402 as well as related cases, including civil cases *U.S. Securities and Exchange Commission v. SAExploration Holdings, Inc.*, *Jeffrey H. Hastings*, *Brent N. Whiteley*, *Brian A. Beatty*, and *Michael J. Scott* and *SAExploration Holdings Inc. v. Pannell Kerr Forster of Texas, PC*, and criminal case, *United States of America v. Jeffrey Hastings*.

The Scheme

Beginning in 2015, SAE entered into a series of data acquisition contracts with ASV totaling \$140 million. From 2015 through 2016, SAE recognized more than \$100 million in revenue from ASV related to the aforementioned contracts. However, ASV allegedly did not have the intention or ability to pay SAE the amount recorded and therefore, the amount due from ASV on SAE's books was largely inflated. For example, according to the SEC's complaint against the CEO, in 2015, SAE had recognized \$83 million in revenue from ASV, \$50 million of which remained outstanding accounts receivable at the end of the year. By the end of 2017, before the scheme was uncovered, 93% of SAE's total accounts receivable balance was allegedly related to ASV.

By 2019, the SEC had commenced an investigation, and SAE announced its plan to restate its financial statements for 2015 through 2019. As a result, the Company's stock price dropped 32% overnight. The restatement's impact on revenue was significant, as the Company's revenue was overstated by nearly \$57 million and \$44 million in 2015 and 2016, respectively. SAE's outside legal counsel also performed its own investigation and identified \$12 million that was distributed by the Company.

It was discovered that SAE Executives allegedly embezzled \$12 million from SAE and began round-tripping the funds. Round-tripping can be described as selling assets to generate sales and earn revenue in the short term with the intention of buying back the same assets in the long term.

First, SAE Executives created Global Equipment Solutions ("GES"), another shell company, that purportedly rented equipment to SAE. The complaint against the CEO alleges GES created and issued \$12 million of fictitious invoices to SAE for equipment rentals, even though GES did not actually own any rental equipment. SAE issued payment to GES based on the fictitious invoices, and from there, GES routed half of the funds, approximately \$6 million, to ASV so that it could route the money back to SAE to pay some of the outstanding receivables. The other \$6 million was kept by SAE Executives.

Further, instead of admitting to round-tripping the funds, the CEO allegedly developed a story that the \$12 million was related to a 2011 contract assignment and created additional fictitious documents to support it. The fictitious documents were then provided to the SEC in response to a subpoena.

Penalties and Punishments

In October 2020, the SEC filed a case against SAE and SAE Executives, collectively.

In 2021, the former CEO was sentenced to three years in prison plus two years of supervised release for his role in inflating the company's publicly reported revenue by tens of millions of dollars and for misappropriating Company funds. The SEC's final judgment against the former CEO ordered him to pay \$1.1 million in disgorgement plus \$0.2 million in prejudgment interest, for a total of \$1.3 million, which shall be deemed satisfied by the Order of Restitution entered against him in his criminal case. The former CEO was also ordered to reimburse SAE in the amount of \$1.2 million.

The former CFO/General Counsel, in addition to his involvement in embezzling \$12 million from SAE, allegedly embezzled an additional \$4 million for his own personal gain between 2014 and 2019. According to the SEC's administrative proceeding against the CFO/General Counsel, he has been suspended from appearing or practicing before the Commission as an attorney or accountant.

Additionally, according to the AAER, the SEC's litigations against the former COO and the former EVP of Operations are ongoing.

Key Considerations

SAE Executives signed SAE's financial statements each period, and in doing so, made several false representations to the external auditors. Each period, SAE Executives certified that, based on their knowledge, the financial statements did not contain any untrue statements, were not misleading, and were fairly presented with respect to the Company's financial condition, results of operations, and cash flows. Despite the intentional deceit to defraud the Company by SAE Executives, SAE's external auditors are now found defending themselves of audit malpractice in a January 2023 petition, in which SAE's new management claims upwards of \$45 million in damages.

External auditors of public companies are required to obtain written representation from management as part of an audit. But what is the external auditors' responsibility if those representations are inaccurate, misleading, or false? According to the PCAOB:

- If a representation made by management is contradicted by other audit evidence, the external auditor should investigate the circumstances and consider the reliability of the representation made;
- Based on the circumstances, the external auditor should consider whether his or her reliance on management's representations relating to other aspects of the financial statements is appropriate and justified;
- External auditors must exercise due professional care which requires professional skepticism, an attitude that includes a questioning mind and a critical assessment of audit evidence; and
- External auditors should not assume management is dishonest but should not be satisfied with less than persuasive evidence because of a belief that management is honest.

But external auditors are not the only ones responsible for reviewing the financial statements prepared by management; audit committees of public companies are also responsible. The audit committee's responsibilities include oversight of the financial reporting process, the audit process, and the company's system of internal controls and compliance. They are expected to understand how management develops their financial statements and are also responsible for assessing whether such information is complete and accurate. In addition, the audit committee is expected to review proposed audit approaches of the external auditors as well as review the company's internal audit function.

"Companies do not act on their own. Where the facts warrant it, we will hold senior executives accountable for conduct that violates the securities laws."

Monique C. Winkler,
Regional Director of the SEC's San
Francisco Regional Office
May 30, 2023
Former Wells Fargo Senior
Executive Carrie Tolstedt Agrees
to Settle SEC Fraud Charges
for Misleading Investors About
Abusive Sales Practices to Inflate a
Key Performance Metric

To prevent situations like the one described at SAE, audit committee members should consider asking the following questions while engaging with both management and the external auditors, including:

- Who are the company's largest customers and what are their current accounts receivable balances?
 - How has the list of customers and associated balances grown or changed over time?
- What is the process for establishing new customer relationships?
 - How are customers vetted for credit worthiness, payment history, and ownership structure?
 - Have there been any exceptions to the process?
- How were the auditors' procedures modified or expanded to address changes in the business, including new customers, revenue growth or other business trends?
- Did the auditors identify any inconsistencies between explanations provided by management and documentation received from third parties or internal analyses?
- Were any new or enhanced management representations requested as part of the audit?
- Do the auditors have any concerns related to the company's financial reporting processes, internal controls, or management's integrity?

When management and those responsible for the oversight of the financial reporting process fulfill their responsibilities, and external auditors remain independent in all matters relating to an audit, no matter the length of time they have been auditing the company, the likelihood of fraud within an organization can be significantly reduced.

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For more information, please contact LeeAnn Manning at 617.586.1076 or Meghan Morine at 646.449.7265.

ABOUT Floyd Advisory

Floyd Advisory is a consulting firm providing financial and accounting expertise in areas of SEC reporting, transaction advisory, investigations and compliance, litigation services, as well as business strategy and valuation.

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