Floyd Advisory

Summary of Accounting and Auditing Enforcement Releases for the Quarter Ended March 31, 2015

Q1 REPORT 2015

CONTENTS

Introduction and Our Objective

We are pleased to present you with our summary of the U.S. Securities and Exchange Commission, Division of Enforcement's Accounting and Auditing Enforcement Releases ("AAERs") for the quarter ended March 31, 2015.

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 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 requests for any additional analysis you would find helpful.

Floyd Advisory
APRIL 2015

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 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 a database of the key facts in each release.

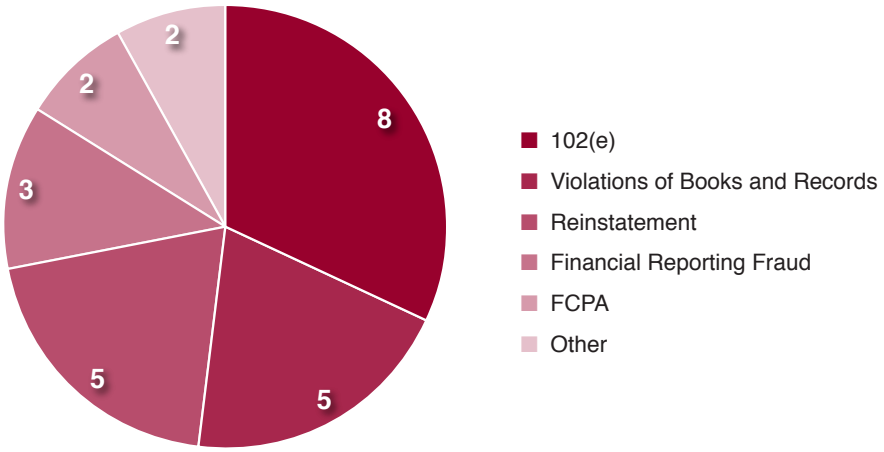
REVIEW PROCESS

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

The Q1 2015 AAERs: Summary by Category and Insights from the Releases

The SEC disclosed 25 AAERs during Q1 2015 which we have sorted into categories in the pie chart below.

Q1 2015 AAERs by Category



The SEC disclosed 25 AAERs for the quarter ended March 31, 2015.

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

Rule 102(e) Actions

As reflected in the chart, Rule 102(e) actions accounted for 32% of the releases issued in Q1 2015. Of the total eleven individuals alleged to have violated Rule 102(e), nine were certified public accountants. Additionally, two out of the eight Rule 102(e) actions were brought against financial statement auditors.

Rule 102(e) actions involve the temporary or permanent censure and denial of the privilege of appearing or practicing before the SEC. For accountants, the standards under which one may be penalized with a Rule 102(e) action include reckless, as well as negligent conduct, defined as a single instance of highly unreasonable conduct that violates professional standards or repeated instances of unreasonable conduct resulting in a violation of professional standards and indicating a lack of competence.

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

- ***The SEC charged a former certified public accountant ("CPA") with violating a prior SEC order suspending the individual from practicing accounting before the SEC.*** In addition, the SEC is seeking disgorgement of compensation received during the suspension period, freezing the individual's assets, and imposing a finding of civil contempt with regard to money owed on a judgment entered against him in the prior action.

  The SEC alleged that the former CPA violated an SEC order issued in October of 2004 that suspended him from appearing or practicing before the SEC as an accountant. According to the SEC, from at least April 2009 to April 2014, the individual violated the 2004 order by becoming a financial consultant to a publicly traded company and helping to restate several years of its financial statements. In that capacity, the individual allegedly participated in the company's financial reporting process by editing footnotes to financial statements, compiling data in support of those footnotes, reviewing sales contracts for proper categorization under applicable revenue recognition rules and principles, and preparing internal memoranda on certain accounting processes.

  The SEC also alleges that, since at least April 2009, the former CPA hid assets and income and failed to make payments due under a final judgment entered on consent on November 4, 2004. In that action, the SEC alleged that the former CPA, as the head of Sales Accounting and the company's revenue recognition expert, had allowed the company to record revenue prematurely from software contracts, backdated his signature on contracts, lied to outside counsel and the company's auditor, and obstructed the company's internal investigation and the SEC's investigation.

- ***Alleged failures of an accounting firm and two of its partners to comply with Public Company Accounting Oversight Board ("PCAOB") auditing standards involved relying on the audit work papers of a predecessor audit firm which had resigned without completing its audit.*** The SEC alleged that the auditors failed to: (a) properly plan the audits and supervise assistants; (b) properly assess audit risk and materiality; (c) properly consider fraud and illegal acts; and (d) act with due professional care. In addition, according to the release, the former engagement quality review partner allegedly failed to act with due professional care because he was aware, or should have been aware, of audit deficiencies but did not address them and therefore violated quality review standards. According to the SEC, even though neither the accounting firm nor the partner planned, performed, or supervised the prior firm's audit work, they took that firm's work papers, performed, at best, a cursory review of them, and then issued an audit report containing an unqualified opinion on the company's financial statements—all within only approximately three weeks of accepting the engagement.

  The accounting firm and the engagement partner agreed to pay disgorgement of $78,000 and prejudgment interest of $12,507, with the partner further paying a civil money penalty in the amount of $40,000. The former quality review partner was denied the privilege of appearing or practicing before the SEC as an accountant.

"An SEC enforcement action should not be viewed merely as a cost of doing business; rather, it should cause individuals and companies—whether or not they are part of the Commission's specific action—to seriously reflect on their own conduct. This is particularly true in the case of recidivist violators. If our remedial sanctions were ineffective in reforming a fraudster, then we must seriously consider removing them from the industry—permanently. The SEC must do this to protect American investors."

Commissioner Luis A. Aguilar
Washington, DC
February 20, 2015

Setting Forth Goals for 2015: Address to Practicing Law Institute's SEC Speaks in 2015 Program

- ***A Connecticut based accounting and auditing firm, along with the engagement partner who oversaw the issue at hand, are charged with improper professional conduct in connection with the audit of a company's financial statements that allegedly contained materially overstated assets and understated liabilities.*** These alleged errors caused the company's reported net capital to be overstated by nearly $5 million. The audit of the company's financial statements was in violation of generally accepted auditing standards because the individuals apparently failed to exercise due care in planning and performing the audit. According to the SEC, they also failed to obtain sufficient and appropriate evidence concerning the company's inventory and liability balances, allegedly choosing instead to rely on client-provided representations. In doing so, the claim states they failed to exercise professional skepticism in evaluating audit evidence. The SEC has ordered a public hearing for the purpose of taking evidence in this matter.

Reinstatement

During Q1 2015, the SEC reinstated five individuals to appear and practice before the SEC as accountants. This is the highest number of reinstatements we have observed in a single quarter during the four year period we've been analyzing AAERs. In 2014 there were six reinstatements for the entire year. It will be interesting to observe the volume of reinstatements over the remainder of this year. Let's take a look at some of the releases for this quarter:

During Q1 2015, the SEC reinstated five individuals to appear and practice before the SEC as accountants. This is the highest number of reinstatements we have observed in a single quarter during the four year period we've been analyzing AAERs.

- ***In 2012, the former auditor, who was also an Associate of the Institute of Chartered Accountants, was denied the privilege of appearing or practicing before the SEC as an accountant as a result of allegedly engaging in improper professional conduct while performing an audit of a company that allegedly was involved in a financial fraud orchestrated by senior management.*** The company is headquartered in Indiana and through its subsidiaries is a manufacturer of medical implants and instruments and also manufactures specialized products for the aerospace industry. The individual was found by the SEC to have (i) improperly planned, staffed, and supervised audits (ii) improperly reviewed and inadequately tested journal entries, (iii) failed to obtain sufficient evidential matter regarding the company's accounts receivable, and (iv) improperly documented the result of the audit in audit work papers.

  The individual was not seeking to appear or practice before the SEC as an independent accountant. Rather, he sought permission to work on the preparation and review of financial statements for a public company and he attested to having his work reviewed by the independent audit committee of any company for which he works. The SEC reinstated the individual to appear and practice before the SEC as an accountant responsible for the preparation or review of financial statements required to be filed by the SEC.

- ***In December 2009, a CPA and former professional practice director of a public accounting firm was denied the privilege of appearing or practicing as an accountant before the SEC as a result of his apparent role as the independent review partner of an audit for a corporation's financial statements.***

A large national commercial operator of fitness centers, which was a public issuer at the time, allegedly engaged in fraudulent financial accounting and made false and misleading disclosures regarding a $55 million special charge in the company's 2002 10-K. Allegedly, this charge was recorded to mitigate deteriorating accounts receivables and was misrepresented by the company in its financial statements in order to mislead investors. The SEC stated that the individual knew or should have known that the audit firm's audits of the company's 2001-2003 financial statements were not performed in accordance with GAAS and the financial statements were not presented in conformity with GAAP.

According to the SEC, the individual has met all of the conditions of the original order, and has attested that he will undertake to have his work reviewed by the independent audit committee of any company for which he works.

Violations of Books and Records

We categorized five AAERs under Violations of Books and Records this quarter, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not meriting financial reporting fraud allegations. One of the releases is worth further discussion:

- ***A New York-based broker-dealer and investment adviser acknowledged that it violated the federal securities laws by engaging in two separate instances of misconduct, the first in the period July 2008 to May 2009, and the second from October 2009 to December 2010.*** In the first, the company allegedly failed to properly withhold and remit taxes to the IRS in connection with the sales of billions of shares of penny stocks for an account in the name of its customer, a broker-dealer firm licensed in the Bahamas that was not registered with the SEC as required. According to the SEC, the unregistered broker provided services and executed transactions for its customers in the U.S. and used its tax exempt status to help its U.S. customers avoid paying taxes. The SEC alleged that the New York-based investment adviser had knowledge of the type of customers the broker firm retained and therefore was required to withhold taxes from the broker's transactions. As a result, the company became liable for the taxes it was obliged to withhold, and its failure to record this liability caused the company's books and records to become inaccurate. In addition, the SEC alleged that the investment adviser failed to file suspicious activity reports in certain instances related to the broker-dealer client.

  The second instance, according to the release, related to the investment adviser's unregistered distribution of securities from a number of companies on behalf of its customer through a registered representative then associated with the company. The SEC alleged that over 2.5 billion shares were sold, and the company received $588,400 in commissions. The release stated there was no registration statement on file as to the customer's offers and sales of securities, a violation of the Securities Act. The investment adviser allegedly failed to appropriately supervise its employees and purportedly failed to establish and implement policies and procedures designed to prevent and detect violations of securities laws.

We categorized five AAERs under Violations of Books and Records this quarter, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not meriting financial reporting fraud allegations.

As a result of these findings, the company has agreed to retain the services of an independent consultant, who will conduct a review of the company's policies and procedures as they relate to compliance with the Securities Act, the Bank Secrecy Act, the Patriot Act, and the company's anti-money laundering program. The company is also ordered to cease and desist from committing or causing any violations of the Exchange Act and the Securities Act, in addition to paying the SEC $10 million comprised of disgorgement, prejudgment interest, and civil penalties.

FCPA Violations

There were two FCPA-related releases in Q1 2015, one of which is a settlement action with one of the world's largest tire companies and is further discussed in our Recommended Reading section of this report. The other release involved violations of the FCPA act by an employee-owned engineering and construction firm and related to offers of payment and other benefits to foreign officials in connection with the award of government contracts. Further details of the enforcement are described below:

There were two FCPA-related releases in Q1 2015.

- ***An employee-owned engineering and construction firm allegedly offered bribes to a foreign official, his former colleague, to secure government contracts.*** Interestingly, the bribes were allegedly offered through the company's former director of international marketing whose employment file was marked "ineligible to rehire." In return, the foreign official allegedly provided the company with access to confidential information and pricing information on two government multi-million dollar development contracts for work in Qatar and Morocco in 2009. According to the release, as a result, the company received an unfair advantage when it came to winning the contracts. The SEC alleged that the former director violated the Exchange Act and ordered a civil money penalty of $50,000 together with orders to cease and desist from committing or causing any violations in the future.

Financial Reporting Frauds

There were three AAERs that we categorized as financial reporting frauds during the quarter. Two of them we describe below:

- ***A Newport Beach, California-based telecommunications company together with its founder and former president and CEO, and its former CFO and corporate secretary, were charged in connection with improper revenue recognition, and obtaining of financing in a deceptive manner.*** According to the release, in the third quarter of 2012 the company improperly recognized net revenues of $1.031 million related to inventory shipped to another entity with whom it had a warehousing arrangement but not a commitment to actually buy the product.

  According to the SEC, the company develops and sells telecommunications equipment designed to integrate mobile telephones into landline telephone systems within a consumer's home. The company contacted a Florida provider of logistics and fulfillment services (the "Florida Entity") about the possibility of warehousing

its new product designed for sale to Mexico's largest provider of landline telephone services (the "Mexican Entity"). According to the release, the Florida entity was only in charge of warehousing inventory for eventual delivery to the Mexican Entity. A fulfillment and logistics agreement was made between the company and the Florida Entity stipulating that "the [Florida Entity] shall not be obliged to pay [the Company] until the Products have been received by the [Mexican Entity] and the [Florida Entity] has received full payment therefore ..." The Florida Entity then allegedly issued a $1.74 million "purchase order" described as "conditional" upon the company's execution of the agreement. The CEO allegedly emailed the company's controller a copy of the purchase order but neglected to pass along the agreement. As per the release, the company did not receive any payment from the Florida Entity, and likewise received no commitment from the Mexican Entity that it would buy the product. Despite this, the company allegedly recognized revenue for the inventory sent to the Florida Entity. According to the release, without this revenue, the company would not have had any revenue for the quarter.

In October 2012, according to the SEC, the company falsely intimated to an existing investor that the inventory held by the Florida Entity related to an existing purchase order by the Mexican Entity. Later that month, the company allegedly received a $2 million loan from the investor in exchange for a warrant to purchase common stock. The SEC found that the former CEO and former CFO failed to act with reasonable care and made materially false and misleading statements to the investor. The former CEO is prohibited from acting as an officer or director of any issuer for five years, and is ordered to pay a civil money penalty of $50,000.

- ***Another AAER involves alleged misstated revenues in the professional service organization of a Silicon Valley-based enterprise software company that arose out of allegedly falsified time records by professional services managers in multiple geographies.*** Specifically, the company allegedly directed consultants in its India subsidiary to repeatedly falsify time records. The SEC identified two practices that led to materially misstated financial statements. First, employees at the company's subsidiary in India allegedly recorded hours and billed customers for the performance of professional services ahead of actual performance, with the result of accelerating revenue recognition and achieving quarterly targets. Second, according to the SEC, the company employees failed to accurately record professional services time worked as a way to conceal budget overruns, and instead, they recorded time to non-billable projects or did not record it at all.

According to the release, these misstatements lasted from October 2007 to January 2012, and as a result the company reported materially false financial statements for that time period. The company has announced that it will restate financial statements for FYs 2008 to 2011, as well as the first quarter of 2012. The company's two former CFOs allegedly realized profits from stock sales of the company and received bonuses in the 12-month periods following the misstated fillings. Although the release states that these individuals were not implicated in the misconduct, they are required under the Sarbanes-Oxley Act to reimburse the company for the stock-sale profits and bonuses. As of the date of the release, they had not. The SEC has ordered the two former CFOs to cease and desist from committing or causing any violations of Section 304 of the Sarbanes-Oxley Act. The former CFOs must reimburse the company $337,375 and $141,992, respectively.

"Self-reporting from individuals and entities has long been an important part of our enforcement program. Self-reporting and cooperation allows us to detect and investigate misconduct more quickly than we otherwise could, as companies are often in a position to short circuit our investigations by quickly providing important factual information about misconduct resulting from their own internal investigations."

Andrew Ceresney
Director
Division of Enforcement
Washington, DC
March 3, 2015

FCPA, Disclosure, and Internal Control Issues Arising in the Pharmaceutical Industry

Other

Two AAERs were placed in the "Other" category this quarter, one of which relates to an issue we have highlighted in previous quarters, namely, the alleged violation of the Sarbanes-Oxley Act by several China-based public accounting firms that refused to provide the SEC with their audit workpapers:

- ***The SEC accepted a settlement submitted by a number of foreign public accounting firms based in China and registered with the PCAOB in relation to alleged failure by the firms to produce workpapers during SEC investigations.*** According to the release, each settling firm performed audit work for one or more of the clients for which the SEC initiated accounting fraud investigations. When between March 2011 and April 2012, the Division of Enforcement requested audit workpapers and documents related to these clients, the firms allegedly claimed that Chinese law prevented them from producing the documents, and have not furnished the SEC with any workpapers or documents as requested. As a result, the SEC found that the firms willfully violated the Sarbanes-Oxley Act and ordered each one to pay $500,000 to the United States Treasury.

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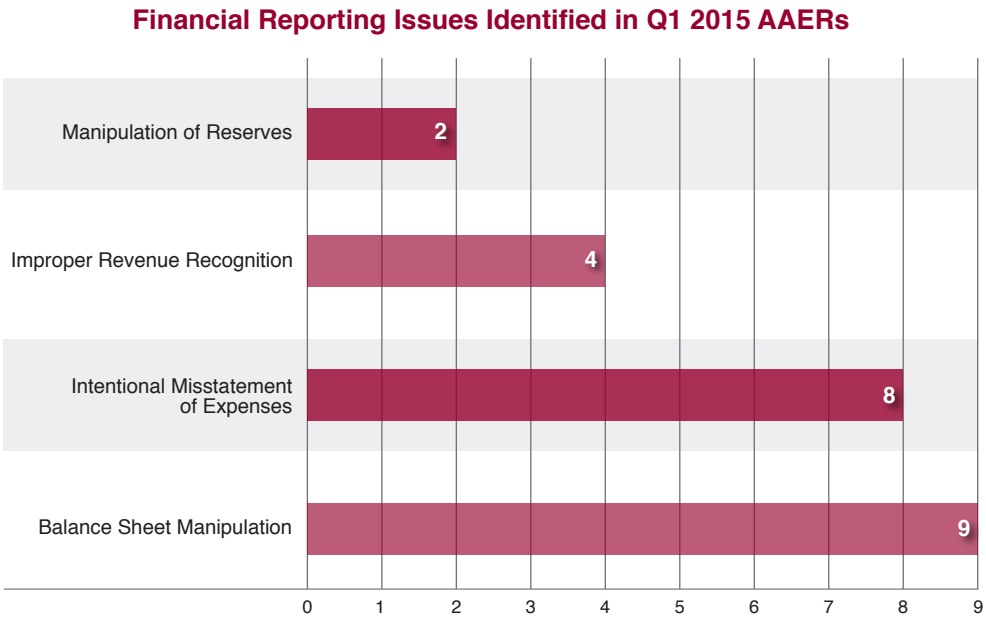
The Q1 2015 AAERs: Summary of Financial Reporting Issues

To report on the frequency of financial reporting issues involved in Q1 2015 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

The following chart provides the results of our financial reporting issue analysis for the Q1 2015 AAERs.



Balance Sheet Manipulation is the leading category of accounting issues identified within AAERs in Q1 2015. This category has almost always led the charts for the four year period we've been analyzing AAERs. One of the most prevalent issues within this group included overstating assets on the company's books and records.

Balance Sheet Manipulation is the leading category of accounting issues identified within AAERs in Q1 2015.

Notable Q1 2015 AAERs 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.

What follows is an AAER related to actions brought by the SEC against former executives, highlighting sensitivity around financial reporting and importance of proper company oversight. Next, our discussion focuses on the significance of internal controls implementation for companies with global operations and the advantages of cooperation during an SEC investigation.

Accounting and Auditing Enforcement Release No. 3624, January 29, 2015 Administrative Proceeding File No. 3-16293. In the Matter of Laurie Bebo, and John Buono, CPA

The AAER regarding John Buono ("Buono"), former CFO of Assisted Living Concepts, Inc. ("ALC") offers a case study on false and misleading SEC filings and the ability of executive management to effectuate and conceal a fraud from various parties including its public accountants and a third-party lessor. Additionally, it allows one to ask probing questions on the effects of the "tone at the top", management integrity, and corporate governance oversight.

During the period of time under review, and according to the SEC, ALC was a publicly traded assisted living and senior residence provider headquartered in Menomonee Falls, Wisconsin. Between 2008 and 2012, ALC operated more than 200 senior living residences in the United States, totaling more than 9,000 units. The company employed approximately 4,200 people and from 2008 – 2012 annual revenues allegedly ranged from $225 to $234 million.

"...one of the most potent remedies is for the Commission to prevent wrongdoers from being allowed to remain in a role that permits them to continue to hurt investors. To that end, the Commission needs to be more aggressive in seeking permanent industry bars and officer and director bars. These bars, not only serve to punish the wrongdoer, but also protect investors from future misconduct by such person. These bars send a clear message to the next potential fraudster."

Commissioner Luis A. Aguilar
Washington, DC
February 20, 2015

Setting Forth Goals for 2015: Address to Practicing Law Institute's SEC Speaks in 2015 Program

The release states that in January 2008, in an effort to expand, ALC acquired the operations of certain Ventas, Inc. ("Ventas") facilities consisting of approximately 540 units. In acquiring these facilities, the SEC alleges that ALC simultaneously entered into a lease with Ventas to operate the facilities. The Ventas lease allegedly contained strict provisions and significant consequences should ALC default on the provisions. Certain of these provisions apparently included occupancy rates between 65% and 82%, and coverage ratios between 0.8 and 1.0.[1] According to the release, should ALC default on any of the lease provisions, Ventas was allowed the following actions including:

- Terminate the lease in its entirety
- Evict ALC from all facilities
- Require ALC to pay damages equal to the net present value of the unpaid rent for the remaining term of the lease

To put the potential damage amounts into perspective, for 2009 through 2011, the amounts were estimated at 101%, 81%, and 46% of ALC's income from operations before income taxes and 56%, 45%, and 31% of their cash flow from operations. Clearly, a default on any of the alleged lease provisions could result in significant repercussions to the business and financial operations of ALC.

Notably, there was an apparent opposition by certain ALC officers and directors about entering into the lease because of its onerous provisions. However, Laurie Bebo ("Bebo"), CEO, allegedly convinced them to move forward with the lease.

The release states that, beginning in the first quarter of 2009, ALC was in violation of certain financial covenants of its lease with Ventas. Rather than report the violations to Ventas, Bebo and Buono allegedly instructed and assisted accounting personnel in developing falsified covenant calculations. More specifically, in order to effectuate

[1]A coverage ratio was defined as "each facility's cash flow for an applicable period, divided by ALC's rent payments to Ventas for that facility. The cash flow component of the coverage ratio calculation generally correlated to a facility's occupancy, such that a decline in occupancy would result in an attendant decline in coverage ratio, and vice-versa."

the scheme, ALC personnel allegedly developed a complex process to determine the number of non-residents[2] that would be required to be added to the calculations to meet the financial covenants. Buono and Bebo allegedly performed and/or directed each of these steps:

- Determined the amount by which ALC would fail their financial covenants and then reverse engineered the required number of non-residents to meet or exceed the covenants.
- Prepared monthly journal entries to record revenue associated with the non-residents' inclusion in the financial covenant calculations to increase the revenue for the Ventas facilities and decrease revenue for the same amount in a corporate revenue account.
- After recording revenue for the last month of a quarter, accounting personnel performed the financial covenant calculation to ensure that all Ventas obligations were met.
- Following the close of each quarter, after calculating the number of non-residents to include in the covenant calculations, Bebo provided a list of the non-residents to ALC's auditors.
- ALC prepared and sent Ventas the adjusted financial covenant calculations, adjusted financial statements for the Ventas facilities, and an officer's certificate that certified the information was accurate and complied in accordance with Generally Accepted Accounting Policies ("GAAP"). The information provided to Ventas never disclosed the inclusion of non-residents in the covenant calculations.

The release states that in the summer of 2011, ALC was exploring a sale of the company and one of the prospective buyers was Ventas. Bebo allegedly directed ALC's investment bankers not to provide Ventas with actual occupancy rates at the Ventas facilities, but allowed the investment bankers to provide this information to other potential buyers.

As a result of these claims, the SEC alleged that Bebo and Buono committed disclosure fraud, enacted a fraudulent scheme, lied to auditors, and committed reporting, record-keeping, and internal controls violations. Additionally, Bebo and Buono allegedly fabricated their lease covenant calculations with Ventas from the third quarter of 2009 to the fourth quarter of 2011 by including between 45 and 103 non-residents in their calculations. Had ALC not included these non-residents in their covenant calculations, the release states that ALC would have failed certain required occupancy and coverage ratios by significant margins.

According to the SEC, ALC also filed false and misleading disclosures in its Forms 10-K for the years ending December 31, 2009 – 2011 and accompanying Form 10-Q's. Apparently, these filings contained the representation that ALC was in compliance with the financial covenants in the Ventas lease and certain of these filings allegedly stated that "ALC does not believe that there is a reasonably likely degree of risk of breach of the [Ventas financial] covenants." Also, it seems that ALC failed to disclose a loss contingency in its financial statements, which was required under GAAP (Accounting Standards Codification 450-20-50-3).

"Our renewed focus on financial reporting and auditing fraud is also starting to bear fruit. We experienced a 40% jump in financial reporting cases last year and filed several important actions involving revenue recognition, auditor independence, and false and misleading financial disclosures."

Chair Mary Jo White
Washington, D.C.
Feb. 20, 2015

Chairman's Address at
SEC Speaks 2015

[2]Examples of non-residents included ALC employees who never stayed or traveled to the Ventas facilities, Bebo's friends and family members, former ALC employees who had been terminated by the Company, and various other individuals.

As a result of these findings, Buono submitted an offer of settlement, which was approved by the SEC. The provision ordered the former officer to cease and desist from further violations of the securities laws, prohibited him from acting as an officer or director of any public company, denied him the privilege of appearing or practicing before the SEC as an accountant, and required him to pay a civil money penalty of $100,000.

In summary, many lessons can be learned from this AAER. Most notably it demonstrates how the integrity, or lack thereof, of senior management can have significant consequences on an organization, particularly when conspiring and colluding. Based on the SEC's allegations, two members of ALC senior management were able to (1) persuade a skeptical board of directors to approve a lease with unfavorable terms, (2) solicit the assistance of accounting personnel in fabricating occupancy figures, (3) make misrepresentations to its outside auditors, and (4) convince ALC's investment banker to withhold information from Ventas that it was otherwise providing to other potential buyers. Despite the existence of these "gatekeepers," senior management was able to carry out its scheme for over two years without detection.

The integrity, or lack thereof, of senior management can have significant consequences on an organization, particularly when conspiring and colluding.

Accounting and Auditing Enforcement Release No. 3640, February 24, 2015 Administrative Proceeding File No. 3-16400, In the matter of The Goodyear Tire & Rubber Company

On November 7 the US Department of Justice ("DOJ") issued Opinion 14-02 "Foreign Corrupt Practices Act Review" that stated "successor liability does not…create liability where none existed before. If an issuer were to acquire a foreign company that was not previously subject to the FCPA's jurisdiction, the mere acquisition of that foreign company would not retroactively create FCPA liability for the acquiring issuer."[3] The opinion followed an inquiry by a US company that was in the process of buying a foreign company and that had identified, in a due diligence process, a number of likely improper payments as well as substantial weaknesses in the foreign company's accounting and recordkeeping.

According to the DOJ, the circumstances of each corporate merger or acquisition are unique and require specifically tailored due diligence and integration processes. Opinion 14-02 explicitly states that companies considering mergers and acquisitions with foreign companies should adhere to the following elements that may determine whether and how the DOJ would seek to impose post-acquisition successor liability in case of a violation:

- *Conduct thorough risk-based FCPA and anti-corruption due diligence*
- *Implement the acquiring company's code of conduct and anti-corruption policies as quickly as practicable*
- *Conduct FCPA and other relevant training for the acquired entity's directors and employees*
- *Conduct an FCPA-based audit of the acquired entity as quickly as practicable*
- *Disclose to the Department of Justice any corrupt payments discovered during the due diligence process.*

[3]U.S. Department of Justice Criminal Division. (2014). *Foreign Corrupt Practices Act Review: Opinion Procedure Release* (No.: 14-02). Washington, DC: U.S. Government Printing Office.

The Goodyear case illustrates why it is so important for US-based companies to immediately implement FCPA controls and training when those companies begin operations in foreign jurisdictions either through a start-up or by acquisition. By doing so, the parent company's management is setting the "tone at the top" and underscoring for the acquired entity that compliance, controls, and ethical conduct are from then on integral parts of corporate culture, and that violations will not be taken lightly or ignored. In the case of acquisitions, FCPA-specific audits and other methods of compliance are useful in detecting ongoing violations that began prior to purchase.

Goodyear is a multinational, Ohio-based company that has manufacturing facilities in 22 countries and sells its products all over the world. According to the SEC, two of the company's subsidiaries, both based in Africa, allegedly authorized and paid bribes to government owned or affiliated entities and concealed the nature of those bribes in their respective books and records from the period 2007-2011. The Goodyear subsidiaries implicated in this AAER are Kenya-based retail tire distributor Treadsetters in which Goodyear acquired a majority interest in 2006, and wholly-owned subsidiary Trentyre, which is primary engaged in selling new tires for mining equipment, and was incorporated in 2007 in Angola. The alleged misconduct is outlined below:

- According to the SEC, Treadsetters' management authorized and paid bribes to employees of government entities and private companies to obtain business. According to the release, this practice was in place prior to the acquisition of the company by Goodyear in 2006. These schemes, which involve cash bribes recorded on Treadsetters' books as expenses for promotional products, appeared to have been carried out by Treadsetters' general manager and finance director. These executives allegedly approved the payments and directed a subordinate to write-out the checks to cash. Various staff members then allegedly cashed the checks and used the money to make improper payments to the employees of Treadsetter customers. According to the AAER, the practice was routine and likely in place prior to Goodyear's acquisition. Treadsetters paid more than $1.5 million in bribes related to the sale of tires, as well as approximately $14,457 in improper payments to local government officials.

- During the same 4-year period, Trentyre allegedly paid over $1.6 million in bribes to employees of private companies and government-owned or affiliated entities in connection to the sale of tires. The majority of these payments were made to Trentyre's largest customer, which the company lost after improper payments were terminated. An additional $64,713 was paid to local government officials, including tax authorities and the police. In the AAER it was alleged that Trentyre's former general manager was the mastermind for this bribery scheme. According to the SEC, the company falsely marked up the cost of its tires on invoices by inflating certain charges such as freight and custom clearing costs. As the tires were sold, these phony costs were reclassified to a balance sheet account, and as bribes were paid, the amounts were credited to the balance sheet account and recorded as payments to vendors.

"The existence of FCPA compliance programs place companies in the best position to detect FCPA misconduct and allow the opportunity to self-report and cooperate. There has been a lot of discussion recently about the advisability of self-reporting FCPA misconduct to the SEC. Let me be clear about my views—I think any company that does the calculus will realize that self-reporting is always in the company's best interest."

Andrew Ceresney
Director
Division of Enforcement
Washington, DC
March 3, 2015

FCPA, Disclosure, and Internal Control Issues Arising in the Pharmaceutical Industry

After receiving information about the alleged improper payments, Goodyear immediately stopped the bribes and disclosed the matter to the SEC. The company voluntarily produced documents, reports, and other information to the SEC. In addition, Goodyear took disciplinary action against employees who failed to ensure that adequate FCPA compliance training and controls were in place for sub-Saharan African subsidiaries and implemented numerous improvements to its compliance program worldwide. Additionally, Goodyear is in the process of divesting its ownership interest in both subsidiaries.

In both cases, it was alleged that Goodyear failed to detect the wrongdoing because it did not implement FCPA compliance training and controls at the companies in question. Additionally, with regard to Treadsetters, which was acquired by Goodyear in 2006, unlike the example company in Opinion 14-02, it appears that Goodyear's due diligence work as not sufficient to detect the activity at the time of acquisition. The SEC found that Goodyear violated various clauses of the Exchange Act and ordered them to pay disgorgement of $14,122,525 and prejudgment interest of $2,105,540. In light of Goodyear's cooperation and improvements, the SEC opted to forgo a civil penalty against the parent company. During a three year period, Goodyear is required to submit written reports to the SEC on the improvements it makes to its FCPA compliance policies and procedures.

For the year ended December 31, 2014, the SEC issued 93 AAERs, representing a slight increase in the volume of AAERs reported over the previous two years.

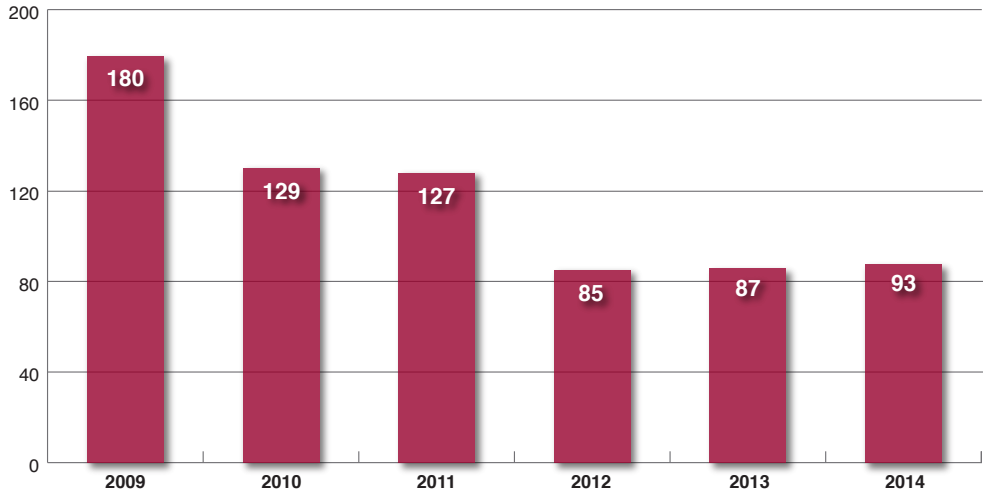
Prior Period Comparisons: Year over Year and Quarterly Statistics

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

For the year ended December 31, 2014, the SEC issued 93 AAERs, representing a slight increase in the volume of AAERs reported over the previous two years. But the volume is still significantly lower than the volume of AAERs issued by the SEC just three to five years ago. The volume of AAERs in 2014 represents 48% fewer enforcement releases than 2009.

Looking Back at Total AAERs in Preceding Years

For The Periods January 1 – December 31,

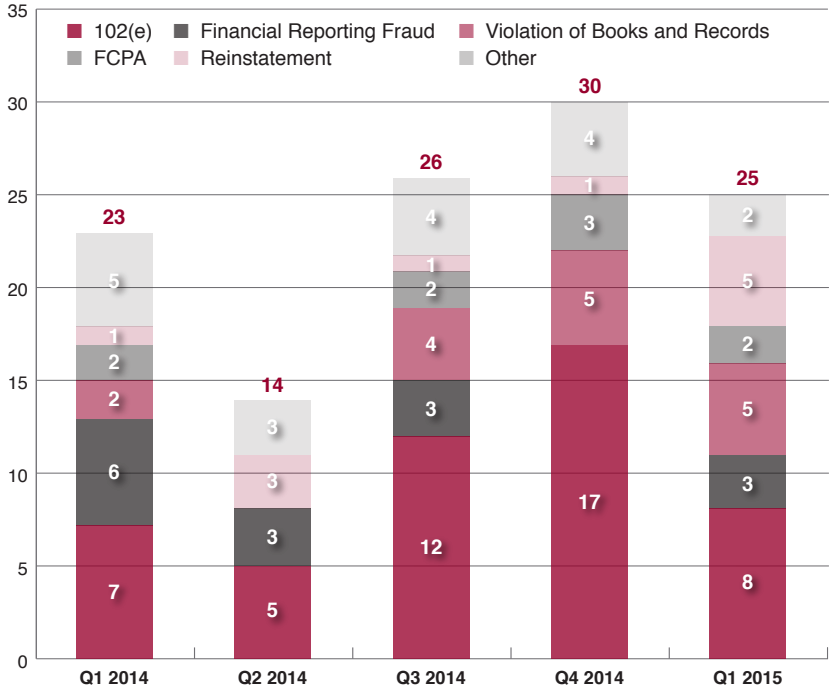


When analyzing the AAER population issued over the last five quarters, we notice a slight increase in the trailing twelve months. Over the last four quarters, there have been 95 issuances, just two releases more than the number of issuances the SEC posted in the 2014 fiscal year. Notably, we can see that 102(e) violations have been the dominating category throughout the period. In addition, the number of Reinstatement cases has increased dramatically during the first quarter of 2015.

Over the last four quarters, there have been 95 issuances, just two releases more than the number of issuances the SEC posted in the 2014 fiscal year.

Quarter to Quarter AAER Comparison Over Period of Last Five Quarters

Q1 2014 through Q1 2015



SEC NEWS: SPECIAL ANNOUNCEMENTS AND UPDATES

During the quarter ended March 31, 2015 the SEC announced several newsworthy items including the major developments described below.

SEC Adopts Rules to Increase Transparency in Security-Based Swap Market

Commission Also Proposes Additional Security-Based Swap Transaction Reporting Rules and Guidance 2015-6

Washington D.C., Jan. 14, 2015 —

The SEC adopted two new sets of rules that will require security-based swap data repositories (SDRs) to register with the SEC and prescribe reporting and public dissemination requirements for security-based swap transaction data. The SEC also proposed certain additional rules, rule amendments and guidance related to the reporting and public dissemination of security-based swap transaction data. The new rules are designed to increase transparency in the security-based swap market and to ensure that SDRs maintain complete records of security-based swap transactions that can be accessed by regulators.

The rules implement mandates under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"These rules go to the core of derivatives reform by establishing a strong foundation for transparency and efficiency in the market," said SEC Chair Mary Jo White. "They provide a powerful framework for trade reporting and the public dissemination of information that addresses blind spots exposed by the financial crisis."

The rules require an SDR to register with the SEC and set forth other requirements with which SDRs must comply. The rules also provide an exemption from registration for certain non-U.S. SDRs when specific conditions are met.

The rules addressing security-based swap data reporting and public dissemination, known as Regulation SBSR, outline the information that must be reported and publicly disseminated for each security-based swap transaction. In addition, the rules assign reporting duties for many security-based swap transactions and require SDRs registered with the SEC to establish and maintain policies and procedures for carrying out their duties under Regulation SBSR. Under the rules, the Commission is recognizing the Global Legal Entity Identifier System as the system from which security-based swap counterparties must obtain codes to identify themselves when reporting security-based swap data. The rules also address the application of Regulation SBSR to cross-border security-based swap activity and include provisions to permit market participants to satisfy their obligations under Regulation SBSR through compliance with the comparable regulation of a foreign jurisdiction.

The proposed rule amendments would assign reporting duties for certain security-based swaps not addressed by the adopted rules, prohibit registered SDRs from charging fees to or imposing usage restrictions on the users of publicly disseminated security-based swap transaction data, and provide a compliance schedule for certain provisions of Regulation SBSR.

"We carefully considered comments received and the workability of the rules and rule proposal in the context of the existing CFTC regimes for swap data repositories, swap data reporting and public dissemination," said Steve Luparello, Director of the SEC's Division of Trading and Markets. "Today's measures are robust and appropriately tailored to the security-based swap market."

The new rules will become effective 60 days after they are published in the Federal Register. Persons subject to the new rules governing the registration of SDRs must comply with them by 365 days after they are published in the Federal Register. The compliance date for certain provisions of Regulation SBSR is the effective date, and the Commission is proposing compliance dates for the remaining provisions of Regulation SBSR in the proposed amendments release. ■

SEC Alerts Investors, Industry on Cybersecurity

Washington D.C., Feb. 3, 2015 —

The SEC released publications that address cybersecurity at brokerage and advisory firms and provide suggestions to investors on ways to protect their online investment accounts.

"Cybersecurity threats know no boundaries. That's why assessing the readiness of market participants and providing investors with information on how to better protect their online investment accounts from cyber threats has been and will continue to be an

important focus of the SEC," said SEC Chair Mary Jo White. "Through our engagement with other government agencies as well as with the industry and educating the investing public, we can all work together to reduce the risk of cyber attacks."

One publication, a Risk Alert from the SEC's Office of Compliance Inspections and Examinations (OCIE), contains observations based on examinations of more than 100 broker-dealers and investment advisers. The examinations focused on how these firms:

- *Identify cybersecurity risks*
- *Establish cybersecurity policies, procedures, and oversight processes*
- *Protect their networks and information*
- *Identify and address risks associated with remote access to client information, funds transfer requests, and third-party vendors*
- *Detect unauthorized activity*

"Our examinations assessed a cross-section of the industry as a way to inform the Commission on the current state of cybersecurity preparedness," said OCIE Director Andrew Bowden. "We hope that investors and industry participants will also benefit from what we have learned."

The second publication, an Investor Bulletin issued by the SEC's Office of Investor Education and Advocacy (OIEA), provides core tips to help investors safeguard their online investment accounts, including:

- *Pick a "strong" password*
- *Use two-step verification*
- *Exercise caution when using public networks and wireless connections*

"As investors increasingly use web-based investment accounts, it is critical that they take steps to safeguard those accounts," said OIEA Director Lori J. Schock. "This bulletin provides everyday investors with a set of useful tips to help protect themselves from cyber-criminals and online fraud." ■

Former Company Officer Earns Half-Million Dollar Whistleblower Award for Reporting Fraud Case to SEC

Washington D.C., March 2, 2015 —

The SEC announced a whistleblower award payout between $475,000 and $575,000 to a former company officer who reported original, high-quality information about a securities fraud that resulted in an SEC enforcement action with sanctions exceeding $1 million.

Officers, directors, trustees, or partners who learn about a fraud through another employee reporting the misconduct generally aren't eligible for an award under the SEC's whistleblower program. However, there is an exception to this exclusion that makes an officer eligible if he or she reports the information to the SEC more than 120 days after other responsible compliance personnel possessed the information and failed to adequately address the issue. This is the first SEC whistleblower award to an officer under these circumstances.

"Corporate officers have front-row seats overseeing the activities of their companies, and this particular officer should be commended for stepping up to report a securities law violation when it became apparent that the company's internal compliance system was not functioning well enough to address it," said Andrew Ceresney, Director of the SEC's Division of Enforcement.

The SEC has now awarded 15 whistle-blowers since its whistleblower program began more than three years ago. Payouts have totaled nearly $50 million out of an investor protection fund established by Congress. The fund is financed entirely through monetary sanctions paid to the SEC by securities law violators, and no money is taken or withheld from harmed investors to pay whistleblower awards.

Whistleblower awards can range from 10 percent to 30 percent of the money collected in a case. By law, the SEC protects the confidentiality of whistle-blowers and does not disclose information that might directly or indirectly reveal a whistleblower's identity.

"Receiving information and cooperation from company insiders is particularly useful in the early detection of securities fraud, and we will continue to leverage whistleblower information to help combat securities law violations and better protect investors and the marketplace," said Sean McKessy, Chief of the SEC's Office of the Whistleblower. "Meanwhile, companies must have rigorous internal compliance programs that adequately address and remedy potential violations voiced by their employees as well as by their officers, directors, or other individuals." ■

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ABOUT Floyd Advisory
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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