Floyd Advisory

Summary of Accounting and Auditing Enforcement Releases for the Quarter Ended September 30, 2017

Q3 REPORT 2017

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 September 30, 2017.

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
OCTOBER 2017

The Q3 2017 AAERs: Highlights

- The SEC issued Rule 102(e) actions against a Big 4 accounting firm and one of its managing partners for alleged audit failures related to financial reporting and valuation during its audit of a publicly traded energy company.

- The Bankrate case featured in our Recommended Reading section illustrates the importance of corporate culture and "tone at the top" in maintaining an effective control environment and discusses the related monitoring responsibilities of boards of directors.

- Of note, two of this quarter's releases related to violations of the Foreign Corrupt Practices Act ("FCPA"), resulting in more than $486 million in disgorgement, interest and civil penalties. One FCPA case included alleged bribes totaling approximately $330 million, the largest total we have seen in an AAER since we began issuing our AAER report in 2010.

Our Process and Methodology

The SEC identifies and discloses enforcement actions related to accounting and auditing 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 (i.e., 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 and Errors, 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.

The Q3 2017 AAERs: Summary by Category and Insights from the Releases

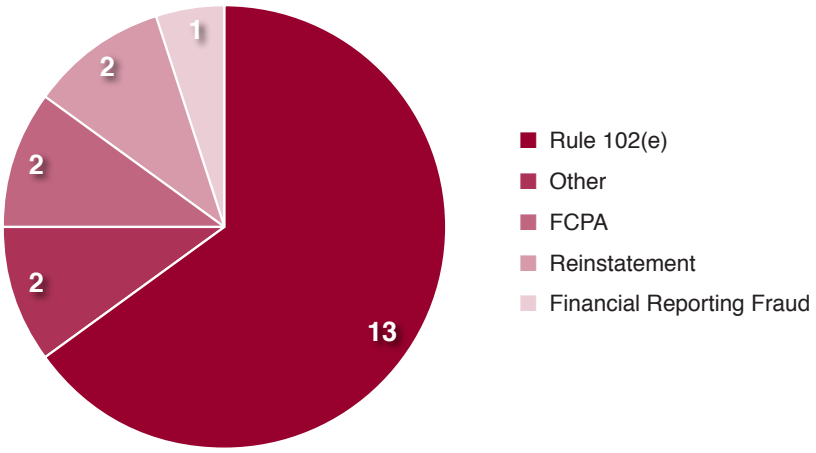
"The SEC has strong and active enforcement and examination programs. I fully intend to continue deploying significant resources to root out fraud and shady practices in the markets, particularly in areas where Main Street investors are most exposed."

Chair Jay Clayton
U.S. Securities and Exchange Commission
New York, N.Y.
July 12, 2017

Remarks at the Economic Club of New York

The SEC disclosed 20 AAERs during Q3 2017, with 102(e) actions representing 65% of the total releases.

Q3 2016 AAERs by Category



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

Rule 102(e) Actions

Rule 102(e) actions involve the censure or, on a temporary or permanent basis, the 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 or 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.

16 individuals received Rule 102(e) sanctions. 13 of these individuals neither admitted nor denied the charges and 3 admitted to the charges.

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

- ***The SEC obtained a partial judgment against an attorney and another co-defendant related to fraud for defalcation of escrow accounts from small businesses seeking commercial loans.*** The defendants allegedly made "undisclosed risky investments," and, in some instances, stole money from escrow clients.

- ***According to the SEC, an investment advisory firm and two of its principals overvalued two private funds under its management in financial statements between 2012 and 2014.*** For one of the funds, the company allegedly overvalued one of the fund's primary assets—a private energy firm—by using unreasonable assumptions in its revenue projections. For the other fund, the company improperly valued a loan that was likely uncollectible. As a result of these errors, the two funds' financial statements were not prepared in accordance with GAAP, which constituted a violation of the custody rule. The SEC also alleges that the company made misrepresentations in one of the fund's MD&A disclosure sent to investors, falsely disclaimed that they had custody of client assets in Form ADV filings, and that one of the principals failed to conduct annual reviews of the company's compliance program.

- ***The Commission accepted Offers of Settlement from a Big 4 accounting firm and one of its then engagement partners, now a managing partner, for alleged improper professional conduct and securities law violations*** related to a review and audit of financial statements of an energy company. According to the release, the energy company's 2010 financial statements overvalued oil interests on its balance sheet by nearly $500 million. The Big 4 firm was hired as the company's auditor during the 2011 fiscal year, and issued an unqualified opinion on the 2011 financial statements. The Respondents allegedly failed to comply with PCAOB standards in its year-end and third quarter 2011 audit and review of the company's financial statements. According to the commission, the auditors failed to obtain sufficient evidence regarding the opening balances related to the oil interests and failed to sufficiently review certain forecasted costs. The firm and managing partner also failed to properly assess the risks associated with accepting the energy company as a client and failed to exercise due professional care and skepticism.

"…accounting fraud or other material accounting problems often start out small and build up over time. Investors are better served when the audit report includes disclosures of these early warning signs, before they grow to have a material impact on the financial statements."

Stephen Deane, CFA
Investor Engagement Advisor
Office of the Investor Advocate
Tulsa, Oklahoma
Aug. 22, 2017

Fall Conference of the Tulsa Chapter of the Institute of Management Accountants "The Rulemaking Process: Two Accounting and Auditing Mini-case Studies"

- ***According to the SEC, the audit partner of a Big 4 accounting firm repeatedly engaged in improper professional conduct during the audit of a venture capital fund's financial statements from 2009 to 2012.*** Per the SEC, the fund's founder arranged for several million dollars to be appropriated to the fund's management company, which the founder owned and controlled. These funds were transferred under the guise of "advanced management fees" and were characterized as "prepaid expenses" and "receivables" on the fund's financial statements, but were actually used to pay the fund's founder's personal expenses and to fulfill the cash flow needs of other entities owned and controlled by the founder. Additionally, the amount of these payments far exceeded the contractually agreed upon amounts to be paid to the management company as a management fee, and the management company had no reasonable means to repay these advanced management fees. According to the release, the audit partner failed to properly scrutinize the fund's financial statements and improperly signed audit reports with unqualified opinions in 2009, 2010, 2011 and 2012, and in doing so violated GAAS. Furthermore, the fund's financial statements were also not GAAP compliant, and the audit partner relied on unreasonable bases to support the management company's ability to repay the advanced management fee balance.

- ***The Operations Controller at a Canadian oil and gas company allegedly participated in a fraudulent scheme which resulted in the company filing materially false and misleading financial statements in 2012, 2013 and 2014.*** The alleged scheme involved underreporting operating expenses, improperly capitalizing operating expenses using false and unsupported journal entries, and circumventing the company's internal accounting controls. In doing so, the respondent aided and abetted the company's books and records violations.

- ***The CFO of a water treatment systems company allegedly overstated the company's financial results over the course of two years, beginning with the company's first quarter as a publicly traded entity.*** The CFO, along with the company's Chairman of the Board and CEO, caused the company to overstate revenues and gross profits by improperly recognizing certain revenues. Per the SEC, the violations included recording certain sales in the incorrect quarter, recording sales that were contingent on the customer's acceptance of a system or the resale to third party, and recording sales for systems that were never delivered. Additionally, the collectability of the sales on these recorded revenues was not reasonably assured. The company ultimately restated its financials for the impacted periods.

- ***According to the SEC, an accountant at a telecommunications company engaged in a Ponzi scheme*** in which the company paid its earlier investors with money received from other investors, rather than revenues from the sale of its services.

- ***The SEC obtained final judgment against the CEO of a technology manufacturing company charged with accounting fraud, among other charges.*** Between 2010 and 2012, the CEO allegedly devised a scheme to artificially inflate the company's revenues and gross margins. The SEC also charged the company's former CFO with multiple control failures at the company and suspended an accountant from appearing and practicing before the SEC based on violations of auditing standards during the 2011 and 2012 audit of the technology manufacturing company.

"...a registrant should also consider how it plans to disaggregate revenue in order to depict how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors. As a result of this important judgment, a registrant may determine that the data will have to be disaggregated in a manner different than has previously been disclosed. This could require system changes or obtaining data from different personnel—all of which could be subject to new or different internal controls."

Sagar Teotia
SEC Deputy Chief Accountant
San Diego, CA
Sept. 21, 2017

Addressing Implementation Matters to Improve Financial Reporting

- ***The Commission accepted an Offer of Settlement from the Senior Vice President and CFO of an energy company.*** The initial complaint in the matter alleged that the Respondent omitted certain disclosures from the company's financial statements which mislead investors by overstating the company's financial performance, and that the Respondent caused the company to issue public financial statements that were not in compliance with GAAP.

- ***The Commission accepted an Offer of Settlement from the former CFO of a real estate investment company for alleged participation in a fraudulent scheme*** to manipulate and falsely report the company's Adjusted Funds From Operations ("AFFO"), a non-GAAP financial metric commonly used in the real estate investment industry. The inflated financial figures allowed the company to meet analyst estimates for the relevant quarter and concealed the fact that the company had overstated its AFFO in the previous quarter.

- ***The SEC accepted Offers of Settlement from the former CFO and Director of Accounting for an online financial publishing company.*** The Commission's original complaint alleged that the Respondents engaged in a scheme to overstate revenues and understate expenses in order to bolster financial results to meet analyst's expectations for the second quarter of 2012. An amended complaint also alleged that following Q2 2012 earnings release, the CFO sold shares of the company's stock at an artificially inflated price. The two releases related to this case also highlight the toxic corporate culture and "tone at the top" that existed at the company. For further discussion regarding these releases, see our Recommended Reading section beginning on page 8.

- ***According to the SEC, a public accounting firm and two of the firm's CPAs did not comply with PCAOB standards in their audit of a publicly traded business development company.*** The company was alleged to have materially misstated the value of its interests in two companies it owned in public filings with the SEC. The Commission claimed that the auditors' procedures related to fair value measurements and disclosures for the two companies were deficient, and that in performing their audit, the auditors failed to obtain sufficient audit evidence, exercise due professional care, staff the audits with adequate competence and experience, and prepare certain audit documentation required by PCAOB standards. The SEC also alleged that one of the auditors failed to properly evaluate management's valuation of the two companies, and that the other auditor did not exercise professional skepticism in performing quality reviews.

- ***The United States District Court for the Southern District of New York found a New York CPA guilty of one count of conspiracy to commit securities fraud in connection with a tender offer.*** The conviction relates to an alleged insider trading scheme that the respondent perpetrated with his son, who worked at a well-known investment bank and divulged the inside information. The respondent was sentenced to four years of probation and ordered to pay $150,000 in criminal forfeiture.

"…our public company disclosure and trading system is an incredibly powerful, efficient, and reliable means of making investment opportunities available to the general public. In fact, this disclosure-based regime has worked so well that we—not just the SEC, but lawmakers and other regulators—have slowly but significantly expanded the scope of required disclosures beyond the core concept of materiality."

Chair Jay Clayton
U.S. Securities and Exchange Commission
New York, N.Y.
July 12, 2017

Remarks at the Economic Club of New York

FCPA Violations

There were two FCPA-related releases in Q3 2017, resulting in more than $486 million in disgorgement, interest, and penalties. The two releases from this quarter include:

- ***According to the SEC, the former Vice President of a United States-based oil company violated the books and records and internal accounting controls provisions of the FCPA.*** To maintain compliance with local content regulations, the oil company was required to partner with a certain number of Angolan-owned businesses as part of its operations. Between 2010 and 2011, the oil company allegedly paid over $3.7 million to an Angola-based company that was owned by a former employee of the oil and gas company. The owner was also a friend and neighbor of an official at Sonangol, Angola's state-owned oil company. Some of these payments were made prior to the oil and gas company securing highly valuable oilfield services contracts. The Sonangol official, who held veto power over subcontracts awarded to the oil company by international oil companies, approved the oil company's local content proposal, helping them secure the new oilfield services contracts. The payments, made under the guise of "consulting" and "management" contracts, violated the company's internal accounting controls and did not reflect the true nature of the transactions in the company's books and records.

- ***According to the SEC, a telecommunications company paid a government official in Uzbekistan upwards of $330 million in bribes to obtain and retain business that generated approximately $2.5 billion in revenue.*** The bribes allowed the company to acquire another company that already had active operations in Uzbekistan. The illicit payments were made under the guise of sham lobbying and consulting services to a company owned by the Uzbek official. The respondent was ordered to pay $457 million in disgorgement for these FCPA violations.

"Rules are meant to be followed, and the public depends on regulators to make sure that happens. It is incumbent on the Commission to write rules so that those subject to them can ascertain how to comply and—now more than ever—how to demonstrate that compliance. Vaguely worded rules can too easily lead to subpar compliance solutions or an overinvestment in control systems. We must recognize practical costs that are sure to arise."

Chair Jay Clayton
U.S. Securities and Exchange Commission
New York, N.Y.
July 12, 2017

Remarks at the Economic Club of New York

Reinstatement

- ***The SEC reinstated a CPA to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.*** The CPA had previously been suspended from practicing under Rule 102(e) of the SEC's Rules of Practice. In a complaint filed in 2005, the SEC alleged that the respondent participated in a scheme which resulted in a public registrant filing materially false and misleading financial statements in 8-K, 10-QSB and 10-KSB forms filed in 2001. Per the release, the respondent and a member of his audit team did not act as independent auditors in accordance with GAAS and engaged in improper accounting practices that violated GAAP.

- ***A CPA was reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.*** According to the Commission's original complaint, the respondent, as his company's controller, committed accounting fraud which resulted in the company filing materially false and misleading quarterly and annual filings in 2002 and 2003, as well as other public filings. The fraud involved recording incorrect and unsupported accounting entries including improper estimates and adjustments which resulted in overstated net income. Specifically, the complaint alleged that the respondent caused overcapitalization of overhead costs, improper recording of supplier receivables, inflated inventory recovery yields, inaccurate inventory estimates, and duplicate accounting entries.

Other

- ***The SEC issued an order denying a motion to stay an administrative proceeding by a private investment firm and its CEO.*** The company sought the stay proceeding pending the resolution by the federal courts of two appeals that raise the question as to whether the SEC's administrative law judges are inferior officers or employees in the context of the Appointments Clause of Article II of the Constitution. The Respondents argued that it would be "unfair and inefficient to proceed with the initial decision before the appeals were resolved." The SEC strongly disfavors postponement unless the requesting party makes a strong case that denial of the request would substantially prejudice the case. Citing its "Rules of Practice" and established case law, the Commission stated that a pending judicial appeal is generally insufficient reasoning to prolong a proceeding, particularly when the Respondents are not a party to the appeal. The SEC also said that hearing in the Respondents' administrative proceeding had already taken place, and issuing a stay would cause a significant delay in the resolution of the proceeding, and any efficiency does not take priority over public interest in prompt enforcement of federal securities laws. The Respondents also argued that "it would be inequitable for [them] to suffer the reputational consequences of an adverse decision that may well be nullified." Based on case law, the Commission stated that being "haled into an allegedly improper forum" did not constitute "an irreparable injury warranting interruption of an ongoing proceeding."

The Q3 2017 AAERs: Summary of Financial Reporting Issues

To report on the frequency of financial reporting issues involved in Q3 2017 AAERs, we identified the accounting problem(s) in each AAER based on the classification definitions below:

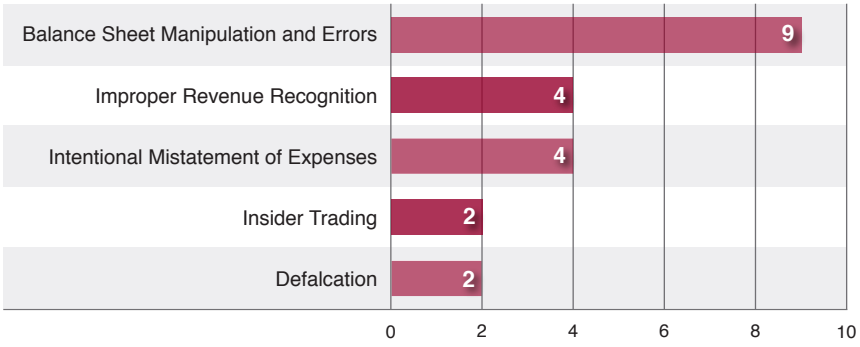
Classification	Definition
Balance Sheet Manipulation and Errors	Misstatement and misrepresentation of asset balances and the recording of transactions inconsistent with their substance
Improper Revenue Recognition	Overstated, premature, and fabricated revenue transactions reported in public filings
Intentional Misstatement of Expenses	Deceptive misclassifications and understatements of expenses
Insider Trading	Trading based on access to confidential information.
Defalcation	Thefts of funds and assets

"The Commission works alongside more than 15 U.S. federal regulatory bodies, over 50 state and territory securities regulators, the Department of Justice, state attorneys general, self-regulatory organizations ("SROs"), and non-SRO standard setting entities. We also participate in several major international bodies and cooperate with regulators in over 115 foreign jurisdictions. Coordination with, between, and among all these organizations is essential to a well-functioning regulatory environment."

Chair Jay Clayton
U.S. Securities and Exchange Commission
New York, N.Y.
July 12, 2017

Remarks at the Economic Club of New York

Financial Reporting Issues Identified in Q3 2017 AAERs



The chart above illustrates the frequency of financial reporting issues by category among all AAERs issued during Q3 2017. Balance Sheet Manipulation and Errors continues to be the most frequent issue among violations with nine instances during the third quarter relating to this category.

> "This highlights the importance of another element of a company's control environment—setting the right "tone at the top" and expectations for responsible conduct throughout the organization. Appropriate tone at the top is the foundation for the consistent application of the sound judgments."
>
> Sagar Teotia
> SEC Deputy Chief Accountant
> San Diego, CA
> Sept. 21, 2017
>
> Addressing Implementation Matters to Improve Financial Reporting

Notable Q3 2017 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 this particular release as earning the distinction of Recommended Reading for our clients.

For recommended reading this quarter, we select two AAERs which together highlight related charges against high-level managers at a single company.[1] For boards of directors, this matter makes evident the importance of identifying the warning signs of a toxic corporate culture and how legal counsel and other advisors for boards can help guide management's tone at the top.

Accounting and Auditing Enforcement Release No. 3890 / August 22, 2017, Administrative Proceeding File No. 3-18122, In the Matter of Edward Dimaria, Respondent.

Accounting and Auditing Enforcement Release No. 3891 / August 22, 2017, Administrative Proceeding File No. 3-18123, In the Matter of Matthew Gamsey, CPA, Respondent.

Boards of directors bear enormous responsibilities for the "tone at the top" and corporate culture of the companies they are entrusted to oversee. This fiduciary duty is evident in the selection of senior management and when assessing the overall ethical climate for the enterprise.

[1] *This article is also published in* Massachusetts Lawyers Weekly.

The recent settlement by Securities and Exchange Commission ("SEC") with former accounting and finance personnel at Bankrate, Inc. ("Bankrate") related to an alleged financial reporting fraud, provides an excellent example of the perils of an adverse corporate culture as well as the warning signs for potential problems.

Bankrate is an online publisher of financial information and operates several websites, primarily focusing on personal finance. According to the SEC, the former Bankrate employees intentionally manipulated the company's revenues and expenses in order to improve financial results for the second quarter of 2012.

Below we will provide a brief overview of the fraud alleged by the SEC at Bankrate and provide specific examples of internal Bankrate communications indicative of corporate culture problems. Importantly, we will also provide proposed questions to ask and factors to consider when assessing corporate culture. Legal counsel advising boards of public registrants may find these considerations useful in guiding their clients to avoid similar problems resulting from corporate culture issues.

Background

During August 2017, the SEC reached settlements with the former CFO and Director of Accounting for Bankrate for alleged violations of federal securities laws, which included fines and suspensions from appearing or practicing before the SEC under Rule 102(e) of the SEC's Rules of Practice.

Per the SEC, Bankrate's former CFO directed others in the organization to record fraudulent revenue without any justification or support, for the sole purpose of meeting analyst expectations. When Bankrate's external auditor sought supporting documentation regarding some of the additional revenue, the VP of Finance responded with what the SEC characterized as a "misleading, generic explanation," a message that both the CFO and Director of Accounting reviewed and approved. Emails among these individuals provide details regarding the alleged auditor deception and, of particular concern, displayed an environment in which numerous people had knowledge of the improper behavior.

During this same quarter, according to the SEC, the CFO instructed one of the division accountants to reduce an accrued expense account for the sole purpose of fabricating an earnings number. The CFO had been using this accrual account as a "cushion" or "cookie-jar" account that could be arbitrarily manipulated as needed. The company also improperly capitalized accounting expenses as "deal costs" rather than expensing them as required under GAAP.

The inflated financial results emanating from these improper accounting entries caused Bankrate to materially overstate its adjusted EBITDA and adjusted EPS for the second quarter of 2012. Per the SEC, within the two weeks following the Q2 2012 earnings release, the CFO sold Bankrate stock at an artificially inflated price. The company ultimately corrected its Q2 2012 financials as part of a broader restatement in June of 2015.

Bankrate, as a corporation, reached a settlement with the SEC related to the accounting fraud charges and paid a $15 million civil penalty. Bankrate also faced significant restatement costs, loss of shareholder value and confidence, and a class action lawsuit. Needless to say, the consequences and distractions resulting from financial frauds can be detrimental to a public registrant.

"Documentation can facilitate the retention or transfer of knowledge useful in resolving discussions more quickly related to things like the identification and assessment of risks, control design, testing strategy, and evaluation of deficiencies. For example, sufficiently detailed control descriptions can support the quality and consistency of control operation, particularly where there is judgment in the execution."

Wesley R. Bricker
SEC Chief Accountant
Washington D.C.
Sept. 11, 2017

Remarks before the AICPA National Conference on Banks & Savings Institutions: Advancing High-Quality Financial Reporting in Our Financial and Capital Markets

Bankrate's Corporate Culture Problem

Notably, in Section 9A of its Form 10-K Annual Report for fiscal year 2014, Bankrate admitted it had a culture problem. Specifically, the company stated that it "did not maintain an effective control environment, which is the foundation for the discipline and structure necessary for effective internal control over financial reporting, as evidenced by: (i) the ***failure to maintain a corporate culture*** that sufficiently instilled, prioritized, and supported an adequate enterprise-wide attitude of control consciousness, established or supported sufficient focus on compliance with appropriate accounting policies and procedures, or implemented adequately designed and effective operating controls over accounting in accordance with GAAP…" (Emphasis added.)

With hindsight, Bankrate disclosed its corporate culture problems, which raises the question: could the warning signs have been identified earlier?

Corporate culture generally refers to the shared values, attitudes, standards and beliefs that characterize members of an organization and define its nature. While this may sound somewhat abstract, people's common conduct and activities are often indicative of the type of culture that exists in a company. Just as certain traits and actions can signal ethical and proper behaviors, there are indicia that signify potential culture problems.

"… all types of controls can be effective as long as the controls, if designed and operating properly, can adequately prevent or detect on a timely basis misstatements, individually or in the aggregate, that could result in a material misstatement of the financial statements."

Wesley R. Bricker
SEC Chief Accountant
Washington D.C.
Sept. 11, 2017

Remarks before the AICPA National Conference on Banks & Savings Institutions: Advancing High-Quality Financial Reporting in Our Financial and Capital Markets

Based simply on the internal communications highlighted in the SEC release, several warning signs of a problematic corporate culture existed at Bankrate prior to the discovery of the fraud. These warning signs included:

- excessive use of offensive language in emails and other internal communications,
- hostility, pressure and threats regarding employees,
- widespread knowledge of unethical behavior, and
- multiple instances of lack of integrity.

Select examples of the internal email discussions include the following:

Upon learning of the CFO's demands that the company book unsupported revenue, the Director of Accounting sent the following email to the VP of Finance:

> "F[***] me—seriously…You better make sure that the revenue/margin analytics are thoroughly explained so that we avoid questions on this sh[**]. Doesn't [he] realize that all this does is put us in a hole to start [the third quarter of 2012] since it will be reversed when the "estimate" is trued up? So in Q3 are we going to record even more when the numbers suck? I know you get it but I'm not sure [he] is thinking ahead for what it means."

When the CFO learned that individuals refused to record unsupported revenue, he sent an email to other Bankrate personnel saying that he was,

> "going to rip [the division CEO's] f[***]ing head off" and fire the [division] accountants if they "f[***] up the accounting."

Bankrate maintained multiple internal spreadsheets with "cushion" accounts and used them to alter financial results. The VP of Finance dubbed these accounts "Ed's Cushion."

In 2011, the CFO asked the VP of Finance to:

> "review the final Balance sheet and cushion anal[ysis]…I may want to tune our numbers."

According to the SEC, the CFO did eventually use the "cushion" accounts to alter these financial results.

In 2012, the CFO directed the VP of Finance to manipulate financial results and

> "book like $150 in rev to EBITDA in May…[p]lus reverse $75k in accruals."

He also added, "keep it under the radar."

When directing the VP of Finance to improperly record certain accounting expenses as deal costs, the CFO sent an email instructing the VP of Finance to:

> "Charge ALL [auditor] BILLS TO ACCRUED DEAL COST—I DON'T CARE IF THEY COMPLAIN, WE CAN SAY IT WAS A MISTAKE."

The VP of Finance forwarded this to the Director of Accounting and said it was "[a] nother [CFO's name] special."

The Director of Accounting wrote an email to the VP of Finance indicating that he had spoken to the CFO, saying:

> "he said there may be some additional good guy adjustments coming and I f[***]ing knew that he was going to do something like this…We need to be very careful how this gets reflected to be able to have some basis for the estimate to show [the auditor] if they happen to figure it out."

Of significant concern, per the SEC release and complaint, the improper conduct at Bankrate involved at least nine individuals in accounting, finance, and other areas throughout Bankrate's various divisions.

Identifying the Warning Signs of a Toxic Corporate Culture

As noted above, corporate culture can seem abstract, which can make it difficult to quantify, measure and assess. Considering the events that took place at Bankrate, as well as best practices, the following examples of questions, observations and considerations that will assist boards of directors in assessing the corporate culture of their organizations:

- Consider employee turnover statistics by level and division, as well as information gathered from exit interviews
- Ensure that financial rewards are tied to ethical behavior and compliance, not just financial performance
- Tour the company facilities and meet with non-executive employees to assess general attitudes
- Inquire as to hiring practices including the characteristics sought in prospective employees
- Be cognizant of employee stress levels and understand the importance placed on work-life balance within the company

"Companies must take into account quantitative factors as well as qualitative factors. …misstatements of relatively small amounts that come to the auditor's attention could have a material effect on the financial statements. These include misstatements that change a loss into income or vice versa, or misstatements that hide a failure to meet analysts' consensus expectations."

Stephen Deane, CFA
Investor Engagement Advisor,
Office of the Investor Advocate
Tulsa, Oklahoma
Aug. 22, 2017

Fall Conference of the
Tulsa Chapter of the Institute
of Management Accountants
"The Rulemaking Process:
Two Accounting and
Auditing Mini-case Studies"

- Determine whether the company recognizes employees for their participation in community involvement activities
- Discuss employee recognition programs and the attributes that are rewarded
- Review employee evaluations to determine if constructive feedback and/or criticism is commonplace
- Evaluate bonus structures and ensure that they are realistic and do not apply excessive pressure to meet sales, revenue or earnings targets
- Consistent with the "broken windows" theory, inquire as to how the company handles small lapses in compliance and ethics
- Monitor management's internal messages for tone and employee treatment
- Evaluate social media reviews, notably Vault and other public forums for commentary
- Discuss the company's team building exercises and social events and how these impact company culture

Closing

As stated above, boards of directors bear a direct oversight responsibility for their company's culture and management's tone at the top. Legal counsel and other advisors for boards can play a key role in helping guide how a board fulfills its fiduciary and oversight responsibilities to shareholders, including the monitoring of corporate culture. No board wants to find itself dealing with the problems encountered at Bankrate.

"Through its oversight function, audit committees play a key role in establishing the right "tone at the top" for a company. The tone at the top establishes the environment and culture within which financial reporting occurs, and is a key factor contributing to the integrity of the financial reporting process. …Simply put, I believe the tone set by an audit committee can affect the quality of…judgments made by management, and, ultimately, the quality of information provided to investors."

Sagar Teotia
SEC Deputy Chief Accountant
San Diego, CA
Sept. 21, 2017

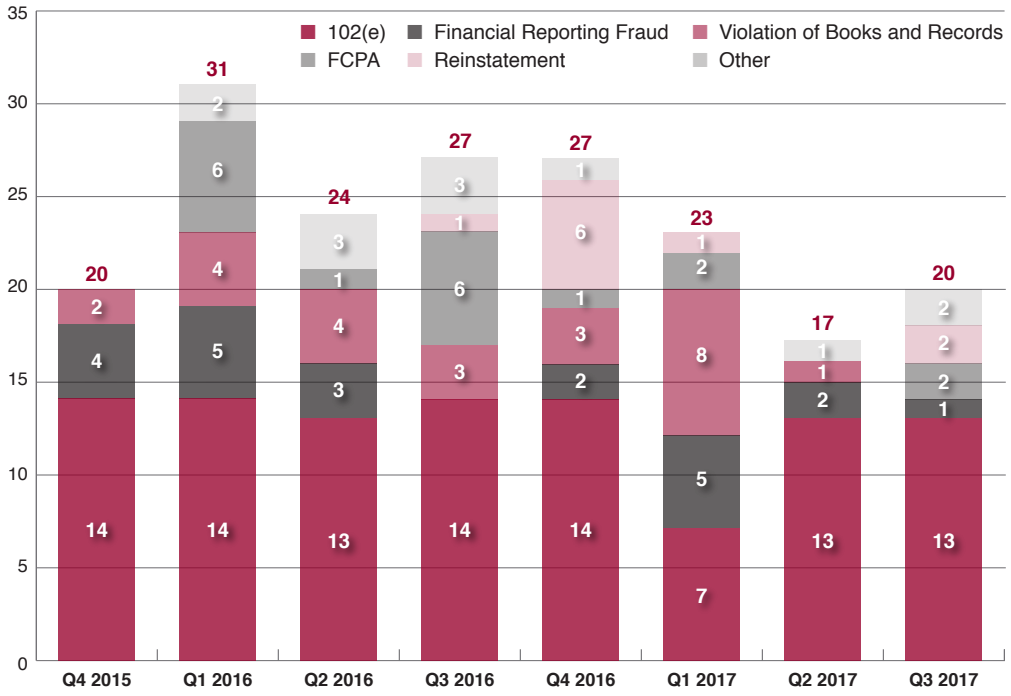
Addressing Implementation Matters to Improve Financial Reporting

Prior Period Comparison: Quarter over Quarter

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 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.

The following chart maps quarterly totals for each category over the past 8 quarters.

Quarter to Quarter AAER Comparison
Over Period of Last Eight Quarters
Q3 2015 through Q2 2017



Based on this data, we made the following observations:

- Rule 102(e) sanctions continue to be by far the most common category of AAERs, constituting 65% of the total releases during the quarter.
- After a minimum of 3, and as many as 8 AAERs within the Violations of Books and Records category in each quarter from Q1 2016 to Q1 2017, there was only 1 such release in Q2 and Q3 2017 combined.
- After only 1 reinstatement release in the four quarters between Q4 2015 and Q3 2016, there have been 9 reinstatements in the four quarters since.

"…when the SEC requires a Chief Executive Officer to make a certification that a specific requirement has been met, while he or she retains ultimate responsibility, realistically, it should be expected that the responsibility will be supported through the chain of command in a demonstrable manner."

Chair Jay Clayton
U.S. Securities and Exchange Commission
New York, N.Y.
July 12, 2017

Remarks at the Economic Club of New York

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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, Transaction Analysis, and Litigation Services.

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