



*Summary of Accounting and  
Auditing Enforcement Releases  
for the Quarter Ended  
March 31, 2022*

Q 1   R E P O R T   2 0 2 2

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### *Introduction and Our Objective*

We are pleased to present you with our summary of the U.S. Securities and Exchange Commission, Division of Enforcement’s Accounting and Auditing Enforcement Releases (“AAERs”) for the quarter ended March 31, 2022.

As an independent consulting firm with financial and accounting expertise, we are committed to contributing thought leadership and relevant research regarding financial reporting matters that will assist our clients in today’s fast-paced and demanding market. This report is just one example of how we continue to fulfill this commitment.

The Division of Enforcement at the 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 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 2022

# Highlights:

- The SEC imposed a civil penalty this quarter in the amount of \$18,000,000 to a healthcare product company for mishandling foreign exchange rate conventions, in a books and records-related violation.
- The SEC released twelve AAERs in Q1 2022, double the number of releases in Q1 2021, with Rule 102(e) sanctions leading all other types of reported violations.
- The SEC reported 202 Rule 102(e) releases during the five-year period ending December 31, 2021, yet only 31 reinstatements. Our Special Feature this quarter analyzes these 31 reinstatements during this five-year period.

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

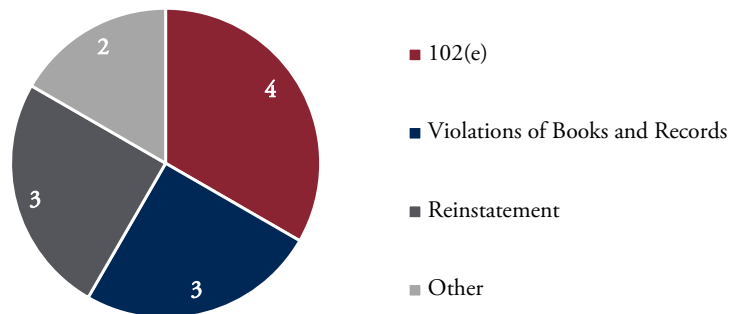
*To meet our objective of summarizing the major items reported in the AAERs, we reviewed those releases identified and disclosed by the SEC on its website, [www.sec.gov](http://www.sec.gov).*

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

# The Q1 2022 AAERs: Summary by Category and Insights from the Releases

The SEC released twelve AAERs during Q1 2022, with Rule 102(e) actions representing one third of all releases this quarter.

Q1 2022 AAERs by Category



“One of the pillars of the SEC’s mission is to protect investors. Fundamental to that pillar is the need to help all investors, including older Americans, guard against financial fraud. Our registrants have to comply with investor protections through specific duties — things like fiduciary duty, duty of care, duty of loyalty, best execution, and best interest.”

Gary Gensler,  
Chairman of the SEC  
March 31, 2022  
Prepared Remarks Before the 2022  
SEC Investor Advocacy  
Clinic Summit

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

Four AAERs related to Rule 102(e) actions were released during this quarter. Rule 102(e) actions involve the temporary or permanent censure and denial of the privilege of appearing or practicing before the SEC. Two examples of the actions reported in this quarter’s Rule 102(e) releases include the following:

- The Commission suspended a senior revenue manager for insider trading.*** According to the criminal case, from at least April 2016 through November 2017, the senior revenue manager was in violation of their duty of confidentiality to the company. Allegedly, the senior revenue manager repeatedly provided material nonpublic information regarding quarterly financial results and guidance to others. The senior revenue manager was found guilty of one count of securities fraud. As a result, they were sentenced to twenty-two months of imprisonment, three years of supervised release, and ordered to forfeit \$30,000. Additionally, they were suspended from appearing or practicing before the Commission indefinitely and will only be eligible to reapply if there is a reversal of the conviction.
- The SEC instituted public administrative proceedings against a public accounting firm, an audit engagement partner, and an audit engagement quality review partner.*** According to the AAER, the audits of multiple private funds were not completed in accordance with PCAOB standards, and the respondents engaged in improper professional conduct. The complaint alleges that the firm and the audit engagement partner failed to obtain sufficient appropriate audit evidence regarding valuation and the existence of hard-to-value assets and did not design and execute sufficient audit responses. Further, the complaint alleges that the audit engagement

quality review partner did not properly assess the team's response to these assets and failed to obtain sufficient appropriate audit evidence. In addition, the firm allegedly failed to maintain its independence, as one of its tax partners served as the trustee or general partner for several trusts that invested in the private funds, and the firm provided bookkeeping services to one of the funds that it also audited. The public accounting firm was censured, and the audit engagement quality review partner and audit engagement partner were suspended with the ability to request reinstatement in one and two years, respectively. Additionally, the company paid civil penalties of \$96,384, while the partners paid \$10,000 and \$25,000, respectively.

### *Violations of Books and Records*

This quarter we categorized three AAERs under Violations of Books and Records, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not meriting financial reporting fraud allegations. Below is a summary of one release within this category:

- ***The SEC imposed a cease-and-desist proceeding against a healthcare product company for inappropriate handling of foreign exchange rate conventions.*** According to the complaint, from 1995 through 2019, the exchange rate used to record foreign currency transactions recognized by subsidiaries in their functional currencies was not in accordance with GAAP. The complaint further alleges that beginning in at least 2009 and continuing through 2019, the foreign exchange rate convention was improperly leveraged when the company engaged in intra-company transactions for the purpose of generating foreign exchange accounting gains or avoiding losses. Thus, the complaint alleges that the company's net income was materially misstated. As a result, the company was ordered to pay a civil penalty in the amount of \$18,000,000.

### *Reinstatements*

There were three releases in Q1 2022 related to the reinstatement of CPAs to practice before the SEC. The following is a summary of two releases within this category:

- ***The SEC reinstated a Controller (CPA) to appear and practice before the Commission as an accountant.*** According to the initial AAER, the CPA, a Controller, engaged in conduct that resulted in the filing of a false and misleading Form 10-K in 2011. Specifically, the AAER alleges the CPA improperly valued inventory and misrepresented to the independent auditor that excess component parts would be used in production and the appropriate write-down of finished goods inventory. In 2019, the CPA was suspended from appearing or practicing before the Commission as an accountant and was eligible to reapply after one year. The CPA complied with the terms of the suspension and was therefore reinstated to appear and practice before the Commission as an accountant.
- ***The SEC reinstated a CFO (CPA) to appear and practice before the Commission as an accountant.*** According to the initial AAER, from at least 2000 through 2005, the CPA, a CFO, illegally backdated stock options granted to employees and directors, concealing millions of dollars in expenses from investors, and significantly overstating the company's income. The AAER further alleges that the CPA signed several of the company's public filings that were materially false and misleading. In 2011, the CPA was suspended, and eligible to reapply after five years. The CPA complied with the terms of the suspension and was approved for reinstatement to appear and practice before the Commission as an accountant.

"... investors have a right to financial statements prepared in accordance with GAAP. When an error is identified, it is important for registrants, auditors, and audit committees to carefully assess whether the error is material by applying a well-reasoned, holistic, objective approach from a reasonable investor's perspective based on the total mix of information."

Paul Munter,  
Acting Chief Accountant  
March 9, 2022  
Assessing Materiality: Focusing  
on the Reasonable Investor When  
Evaluating Errors



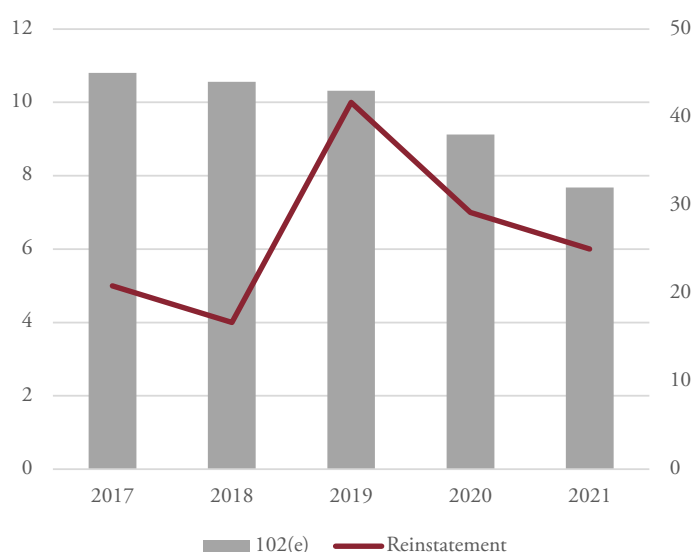
# Special Feature: Trends and Observations for Accountants Reinstated after a Prior Suspension for a Rule 102(e) Violation

Under Rule 102(e), the SEC is authorized to suspend or disbar a person from appearing or practicing before the Commission on behalf of public registrants. Individuals sanctioned under Rule 102(e)(1) and (3) may apply for reinstatement at any time unless a specific waiting period is defined. For Rule 102(e)(2) sanctions, an individual may reapply only if there is a reversal of the conviction or termination of the underlying suspension, disbarment, or license revocation that gave rise to the enforcement action. The vast majority of auditors sanctioned for Rule 102(e) violations are sanctioned under 102(e)(1) and have the opportunity to apply for reinstatement.

The SEC does not release data on the number of applications for reinstatement it receives. This information, if made available, would be beneficial to understand the frequency in which the SEC grants reinstatements to accountants sanctioned under Rule 102(e), an important consideration if one wishes to be reinstated and return to practicing and appearing before the SEC.

The SEC does, however, release an AAER when a reinstatement occurs. Compared to the 202 Rule 102(e) violations over the five-year period ended December 31, 2021, which related to 243<sup>1</sup> individuals, only 31 reinstatements occurred. The yearly number of reinstatements peaked in 2019 with 10 occurring during the year, 7 of which were auditors at the time of their original suspension.

**Count of Reinstatements & 102(e) Violations by Year**



<sup>1</sup> Please note, for the purposes of this analysis, we focused on the number of actions taken within these 202 AAERs, as the SEC often charges multiple individuals under a single AAER. In other words, our analysis focuses on the 243 Rule 102(e) actions filed within the 202 Rule 102(e) AAERs over the previous five years.

Notably, for the 31 accountants reinstated, the average waiting period before the allowance to request a reinstatement was approximately 2.8 years. Additionally, the time between the waiting period and the actual reinstatement, if approved, averaged another 3.0 years. Therefore, the actual total suspension time (i.e., the waiting period plus the time between reinstatement eligibility and reinstatement) for these reinstated accountants averaged about 5.8 years in total between the date of suspension and the date of reinstatement.

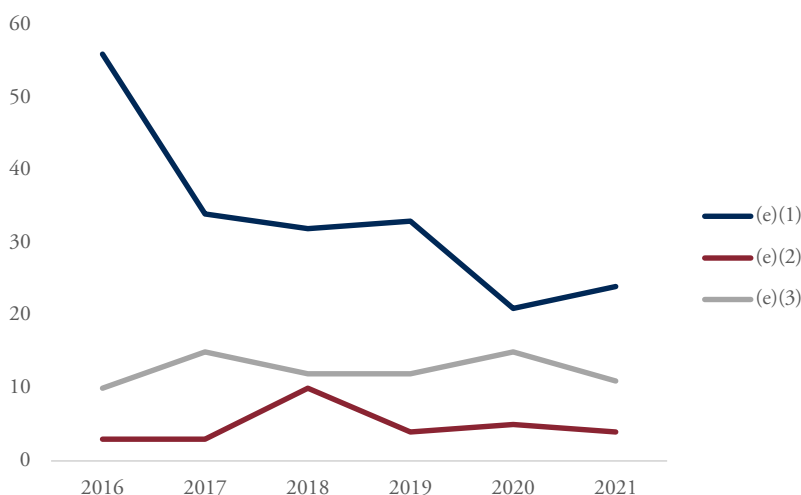
| Year of Suspension | Count of Accountants Reinstated During Five-Year Period | Average Years Waiting Period | Average Years Between Waiting Period and Reinstatement | Average Years Total Suspension |
|--------------------|---|------------------------------|--|--------------------------------|
| 2005               | 1   | 5.0                          | 7.7  | 12.7                           |
| 2006               | 2   | 3.5                          | 9.1  | 12.6                           |
| 2007               | 1   | 5.0                          | 5.0  | 10.0                           |
| 2008               | 0   | N/A                          | N/A  | N/A                            |
| 2009               | 1   | 5.0                          | 5.0  | 10.0                           |
| 2010               | 2   | 4.0                          | 3.3  | 7.3                            |
| 2011               | 2   | 4.0                          | 2.8  | 6.8                            |
| 2012               | 1   | 5.0                          | 4.4  | 9.4                            |
| 2013               | 3   | 3.3                          | 2.4  | 5.8                            |
| 2014               | 2   | 2.5                          | 2.8  | 5.3                            |
| 2015               | 3   | 2.3                          | 1.3  | 3.6                            |
| 2016               | 9   | 1.8                          | 2.0  | 3.8                            |
| 2017               | 2   | 1.5                          | 1.4  | 2.9                            |
| 2018               | 2   | 1.0                          | 1.7  | 2.7                            |
| 2019               | 0   | N/A                          | N/A  | N/A                            |
| 2020               | 0   | N/A                          | N/A  | N/A                            |
| 2021               | 0   | N/A                          | N/A  | N/A                            |
| <b>Total:</b>      | <b>31</b>   | <b>2.8</b>                   | <b>3.0</b>   | <b>5.8</b>                     |

As shown in the table above, it appears that accountants sanctioned for a Rule 102(e) violation can expect their ineligibility to practice before the SEC to extend to at least twice the “waiting period” prescribed to them by the SEC, even if the sanctioned accountant has complied with all of the conditions set forth in his or her original suspension. The reason for the delay is unclear, however we noted that based on the Commission’s description within each of the reinstatement AAERs between 2017 and 2021, each CPA applied only one time for reinstatement.

Of the 31 accountants reinstated during the five-year period between 2017 and 2021, 55% worked in public accounting at the time of their suspension. Over the same period, 243 accountants were suspended for a Rule 102(e) violation, 51% of which worked in public accounting. These percentages are not significantly different, indicating the chance of a successful reinstatement does not appear to be tied to the accounting sector, i.e., public accounting versus corporate position.

Rule 102(e) actions represent a significant portion of total reported AAERs. In fact, during the five-year period, the SEC released 202 AAERs under Rule 102(e), which accounted for approximately 47% of all AAERs during that period. However, despite the prominence of Rule 102(e) releases as a percentage of total AAERs, the number of Rule 102(e) actions declined 29% over the five-year period, from 44 actions in 2017 to 32 actions in 2021. Interestingly, the prominence of actions imposed under Rule 102(e)(1) was unequivocal, as approximately 66% of all Rule 102(e) actions pursued were under section (1). Therefore, the downward trend in total Rule 102(e) actions was directly attributable to a significant decline in the number of actions filed under Rule 102(e)(1), as seen in the chart below. Of note, Rule 102(e) actions filed under the other two sections remained relatively consistent across the five-year period.

**Rule 102(e) Actions by Year**



“... providing investors with high quality financial information, including financial statements prepared in compliance with generally accepted accounting principles ('GAAP'), should be the focus of all those involved in financial reporting.”

Paul Munter,  
Acting Chief Accountant  
March 9, 2022  
Assessing Materiality: Focusing  
on the Reasonable Investor When  
Evaluating Errors

Comparably, 21 of the 31 accountants that were reinstated during the five-year period, representing 68%, were originally suspended for a Rule 102(e)(1) violation. The remaining 10 accountants, representing 32%, were originally suspended for a Rule 102(e)(3) violation. None of the accountants that were reinstated had originally been suspended under a Rule 102(e)(2) violation, which is in line with expectations, as accountants suspended for a Rule 102(e)(2) violation may only apply for reinstatement if there is a reversal of the conviction or termination of the underlying suspension, disbarment, or license revocation that gave rise to the enforcement action. The average suspension time for actions under a Rule 102(e)(3) was over three years longer than that of suspensions under a Rule 102(e)(1) for those individuals that were reinstated over the five-year period we reviewed.

| Action Type of Original Suspension | Count of Reinstatements | Average Years Total Suspension |
|------------------------------------|-------------------------|--------------------------------|
| 102(e)(1)                          | 21                      | 4.7                            |
| 102(e)(2)                          | 0                       | N/A                            |
| 102(e)(3)                          | 10                      | 8.1                            |

Nevertheless, the SEC's Rule 102(e) suspensions and reinstatements will be a trend we continue to follow closely. It will be particularly intriguing to compare and contrast the number of actions brought under Rule 102(e) and the related number of reinstatements.

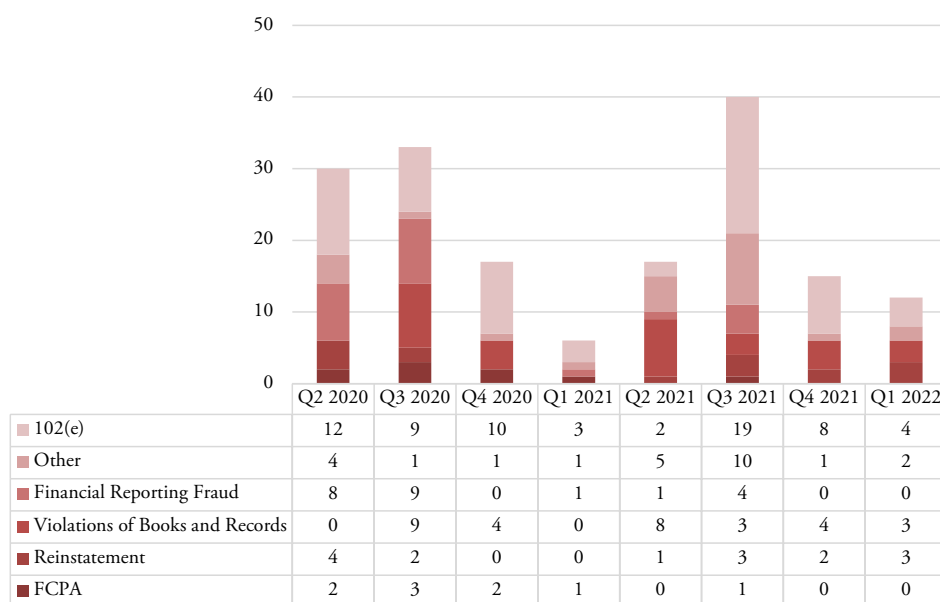


# Prior Period Comparison: Quarter to Quarter

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

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

**Quarter to Quarter AAER Comparison**  
Q2 2020 through Q1 2022



Based on this data, we made the following observations:

- Rule 102(e) sanctions continue to be the most common category of release, on average accounting for 40% of total AAERs released each quarter over the prior two years. Of significance, the SEC has increased their reinstatements over the past three quarters as compared to the prior five quarters.
- As compared to the past four quarters, there continues to be a low release rate in Q1 2022. This is consistent with the low number of releases in Q1 2021 and Q1 2020, which was in part due to the COVID-19 pandemic.

[www.floydadvisory.com](http://www.floydadvisory.com)

#### **ACKNOWLEDGEMENT**

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#### **ABOUT Floyd Advisory**

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

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