



*Summary of Accounting and  
Auditing Enforcement Releases  
for the Quarter Ended  
September 30, 2022*

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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 (“SEC”), Division of Enforcement’s Accounting and Auditing Enforcement Releases (“AAERs”) for the quarter ended September 30, 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 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 the 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  
OCTOBER 2022

# Highlights:

- The SEC released 38 AAERs in Q3 2022, nearly the same number of releases as the prior three quarters combined. A significant increase in the number of AAERs released in the third quarter is not novel, as September 30th marks the end of the SEC's fiscal year and the date in which it "closes the books" and releases the results of its annual activities, including enforcement actions.
- Rule 102(e) sanctions led all types of reported violations for Q3 2022, with 17 AAERs. Of note, more than one third of these 102(e) sanctions included actions related to accounting firms, resulting in combined penalties of more than \$25 million.
- The Financial Reporting Fraud category significantly increased this quarter, with nine releases as compared to only one in the prior three quarters combined. These releases resulted in nearly \$40 million of combined civil money penalties, disgorgement, and prejudgment interest collected by the SEC, including an \$8 million civil penalty imposed on an information technology services company for omitting material information from its disclosures and allegedly holding back certain sales orders to delay the timing of revenue recognition.
- Our Recommended Reading section highlights the AAER related to CHS Inc., which involved an employee who was able to manipulate contracts and their associated value due to a lack of internal controls over financial reporting. We provide an overview of CHS Inc.'s internal control deficiencies, summarize the importance of segregation of duties, and provide recommendations that can prevent other companies from facing similar issues in the future.

## OUR PROCESS AND METHODOLOGY

*The AAERs issued by the SEC are defined as financial reporting related enforcement actions concerning civil lawsuits brought in federal court and notices and orders concerning the institution and/or settlement of administrative proceedings. The AAERs are intended to highlight certain actions and are not meant to be a complete and exhaustive compilation of all actions that may fit into the definition above.*

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

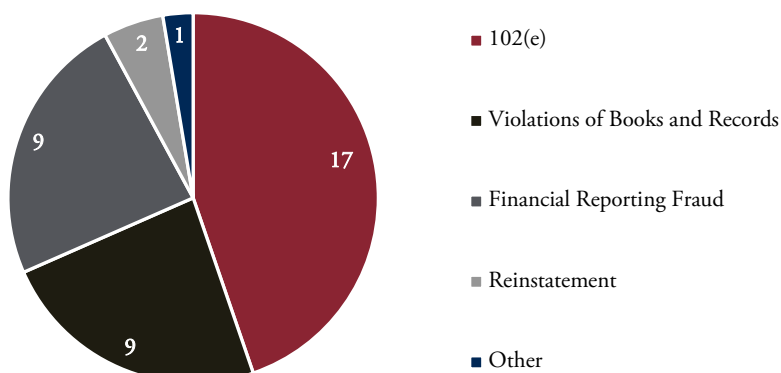
*As part of our review, we gathered information and key facts, identified common attributes, and noted trends. Applying our professional judgment to the information provided by the SEC, we sorted the releases into major categories (i.e., Rule 102(e) Actions, Violations of Books and Records, Financial Reporting Fraud, Reinstatements to Appear and Practice before the SEC, Foreign Corrupt Practices Act ("FCPA") Violations, and Other<sup>1</sup>). 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.*

<sup>1</sup> AAERs categorized as "Other" are generally related to certain logistical aspects of SEC proceedings, such as orders regarding scheduling, decision extensions, and entries of final judgments.

# The Q3 2022 AAERs: Summary by Category and Insights from the Releases

The SEC released 38 AAERs during Q3 2022, with Rule 102(e) actions representing nearly half of the total releases this quarter. The following graph illustrates this quarter's total AAERs by category:

Q3 2022 AAERs by Category



"High-quality audits protect investors, instill shareholder confidence in the quality of the financial information, and enable public companies to raise capital efficiently."

Paul Munter,  
Acting Chief Accountant  
September 6, 2022  
Audit Quality and Investor  
Protection under the Holding  
Foreign Companies Accountable  
Act

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

## Rule 102(e) Actions

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

- The SEC censured an accounting firm for its affiliate's failure to perform audits according to US standards and requirements.*** According to the release, audit personnel failed to meet obligations to their clients and investors who relied on the audit reports they prepared. An internal investigation revealed that the affiliate allegedly failed to perform required audit procedures in two ways. First, certain engagement teams concluded that balances and transactions were appropriately recorded without actually obtaining appropriate audit evidence. Instead, these teams allegedly asked their clients to complete the required documentation and made it appear that the audit personnel had performed all the necessary testing. Second, on certain engagements, the audit personnel failed to select and test samples properly. Instead, the engagement teams allegedly asked their clients to select the samples for testing. As noted in the release, this exercise fundamentally defeated the purpose of sampling and impaired the reliability of testing because it created a risk that the client would strategically choose only samples they knew were adequately supported.

The release notes that deficiencies existed in the affiliate's system of quality control, as the work performed by the affiliate did not meet applicable US standards, and the engagement partners and senior members of the relevant audit teams failed to supervise the audit personnel engaged in these practices. The firm was censured and ordered to complete a series of remedial efforts, including implementing additional required training for all audit personnel serving US public companies, and was ordered to pay a civil money penalty in the amount of \$20 million.

- ***The SEC suspended a CFO/COO for falsifying the books and records of a publicly traded company.*** A CFO/COO allegedly approved invoices and purchase orders totaling \$16 million over the course of 11 years, that in addition to being used for his own personal expenses, were also used to pay entities in which he had a personal interest in and entities performing services for those he had an interest in. According to the release, the CFO/COO circumvented internal controls by, among other things, routinely falsifying certifications concerning potential conflicts of interest and by submitting false information regarding vendors during the onboarding and expense approval process. In addition to being suspended from appearing or practicing before the SEC as an accountant, according to the U.S. Attorney's Office press release, the individual also pled guilty to wire fraud and falsification of corporate books and records and agreed to forfeit more than \$10 million and pay restitution of \$16 million.
- ***The SEC censured an accounting firm for classifying material information as immaterial and issuing an unqualified (clean) opinion on misstated financial statements.*** From 2015 through 2018, an accounting firm failed to properly conduct audits of a technology company's financial statements and internal controls over financial reporting according to PCAOB standards. At the end of 2014, the company began to recognize revenue on "bill and hold" sales, which occur when a sale is made but the seller holds the product until a later date when the customer needs it to be delivered. Under this method of sale, as long as certain criteria are met, the seller may recognize revenue prior to the product being delivered to the customer. According to the release, during the 2017 audit, the accounting firm identified revenue related to these sales that was improperly recognized, and they allegedly had knowledge that the issue would also impact the revenue recognition of the prior three years. However, the firm concluded the misstatements were immaterial. The release notes that the firm's conclusion was unreasonable as it was based on inaccurate estimates and qualitative factors instead of quantitative factors, which exceeded the materiality level that the firm had set for the audit during the relevant periods. As a result, the audit reports that were issued on the company's financial statements and internal controls were inaccurate, as well as the assertions by the accounting firm that they had conducted the audits in accordance with PCAOB standards. The SEC censured the firm, ordered them to pay a civil money penalty of \$3.75 million, and required that an independent consultant evaluate their policies and procedures related to audits, reviews, and quality controls.

### *Violations of Books and Records*

This quarter we categorized nine AAERs as Violations of Books and Records, a category that includes alleged improper accounting treatments and internal control problems deemed worthy of an enforcement action but not meriting financial reporting fraud allegations. Below is a summary of two releases, the first of which resulted in nearly 85% of all fines and penalties this quarter. Our Recommended Reading section discusses a third example in further detail.

"[W]hen the firm agrees to implement robust improvements to its compliance policies and procedures, and the SEC's order lays out those improvements, other market participants are provided with one potential roadmap of what proactive compliance looks like."

Sanjay Wadhwa,  
Deputy Director of Enforcement  
September 9, 2022  
Remarks at SEC Speaks



**“Firms also need to respond appropriately to red flags and make timely and accurate required disclosures, which are essential to investor protection and enhancing trust and confidence in the markets.”**

Gurbir S. Grewal,  
Director, Division of Enforcement  
July 21, 2022  
Testimony on “Oversight of the  
SEC’s Division of Enforcement”  
Before the United States House  
of Representatives Committee on  
Financial Services Subcommittee  
on Investor Protection,  
Entrepreneurship, and Capital  
Markets

- ***The SEC imposed a cease-and-desist order against a financial institution and one of its subsidiaries for offering and selling securities in excess of their registered limit.*** In 2017, a financial institution and its subsidiary lost their status as well-known seasoned issuers (“WKSI”) and the subsidiary was prompted to convert to a non-WKSI in 2018 (hereafter, “2018 Shelf”). As part of the conversion, the 2018 Shelf specified a maximum aggregate offering price of securities that the subsidiary could offer or sell over the next 18 months. In mid-2019, approaching the 2018 Shelf’s expiration, the subsidiary completed a registration statement for a new shelf (hereafter, “2019 Shelf”), which similarly, also had a specification regarding the maximum aggregate offering price of securities it could offer or sell. According to the release, in 2019, subsidiary personnel calculated the amount of securities left over on the 2018 Shelf following its expiration. The release notes that this carry-over calculation accounted for outstanding securities needed for offers or sales during the gap period between the registration date and effective date of the 2019 Shelf. However, by 2022, the subsidiary determined that the carry-over calculation was performed incorrectly and, in addition, internal controls to track the amount of securities on a real-time basis were never established. As a result, the subsidiary offered and sold approximately \$1.3 billion and \$16.4 billion of securities in excess of the registered 2018 Shelf and 2019 Shelf amounts, respectively. In March 2022, the subsidiary reported the issue to regulators, publicly disclosed their internal control issues and potential financial impact related to the over-issuance, and made other disclosures to the market regarding insufficient issuance capacities moving forward. The financial institution and its subsidiary were ordered to pay \$360 million in fines and penalties, consisting of a civil money penalty of \$200 million and disgorgement of \$160 million, including \$11 million of prejudgment interest.
- ***The SEC imposed a cease-and-desist order against a technology company and its CFO/COO related to improper loan disclosures.*** A technology company violated its finance contract with an investment bank, under which they were to receive €25 million in three tranches. The contract required the company to comply with certain debt covenants, (hereafter, “EBITDA Covenant”). In 2019, after already receiving €10 million, the company determined it would be in breach of the EBITDA Covenant and notified the bank. However, according to the release, the company did not notify their auditors and the 2019 financial statements omitted a required disclosure related to the breach. The 2019 financial statements also misclassified the €10 million loan as a non-current liability instead of a current liability. The release notes that both of the aforementioned reporting issues were either known by management at the time or should have been known. The company self-reported the incident and began implementing a remediation plan to improve internal controls. They were ordered to pay a civil money penalty in the amount of \$175,000, while the CFO/COO was ordered to pay a civil money penalty of \$50,000.

### *Financial Reporting Fraud*

Nine AAERs were categorized as Financial Reporting Fraud during the quarter, a significant increase over prior periods. Below are three examples of releases within this category:

- ***The SEC imposed a cease-and-desist order against an information technology company for improperly delaying revenue recognition and omitting material information from disclosures.*** According to the release, an information technology company adopted a new accounting policy in 2019 and began discretionarily holding back certain sales orders to delay and control the timing of revenue recognition for 2019 and 2020. These discretionary “holds” delayed the recognition of certain license revenues to subsequent or future quarters even as services were performed. In doing so, the company shifted tens of millions of dollars in revenue into future quarters throughout 2019 and 2020. This also had an effect on the company’s backlog, which, as noted in the release, the company reported in its

quarterly and annual financial statements to fluctuate period to period based on product and geography but failed to include the material information regarding the discretionary nature of the backlog (i.e., discretionary holds performed by the company). These holds allegedly obscured the company's financial results and helped the company avoid revenue shortfalls while also meeting analysts' estimates. The material information related to the backlog and revenue management was also omitted from earnings calls and releases, in addition to the financial statements. As a result of omitting this material information from its disclosures, the SEC ordered the company to pay a civil money penalty of \$8 million.

- ***The SEC charged a technology company, its subsidiary, and CEO and CFO with fraud.*** According to the release, from at least early 2019 to mid-2020, the parties issued materially false and misleading press releases that referred to agreements and relationships with customers that did not exist or were exaggerated. The CEO and CFO also allegedly created fictitious backdated orders that inflated the subsidiary's revenue in 2020. Separately, during this time, the subsidiary had raised \$30 million from investors in private placements, while making representations and warranties that its financial statements were prepared in accordance with GAAP. However, in 2021, the subsidiary disclosed that the prior period financial statements should not be relied upon for reasons including revenue recognition errors and underreported cost of goods sold. The SEC ordered the subsidiary to pay disgorgement in the amount of \$4.8 million, plus prejudgment interest in the amount of \$230,000. The former CEO was ordered to pay a \$150,000 civil penalty and prohibited from acting as an officer or director of a public company for five years. The SEC is also seeking permanent injunctions and civil money penalties against the parent company and former CFO. These proceedings are ongoing.
- ***The SEC charged a former controller with accounting fraud.*** According to the litigation release, from 2016 through 2019, the controller of a network infrastructure company assisted the former CEO, CFO, and CAO/President in recognizing \$12.5 million in revenue and related accounts receivable for nonexistent construction projects. Furthermore, the controller and aforementioned management allegedly misled auditors by providing false documents related to the fictitious revenue and receivables. According to the litigation release, the company's revenue was inflated up to 108% in certain periods. The SEC charged the controller with accounting fraud, and the amount of civil penalty to be paid will be decided through further motion of the SEC. According to press releases, company management was prosecuted criminally through a separate action for additional allegations including misappropriation of assets and embezzlement.

## Reinstatements

There were two releases in Q3 2022 related to the reinstatement of CPAs to practice before the SEC. The following is a summary of one release within this category:

- ***A CPA was reinstated to appear and practice before the SEC.*** According to the original complaint, the CPA, a VP of Corporate Operations, illegally granted undisclosed "in-the-money" options to executives and employees of the company by backdating approximately 1,400 stock option grants to coincide with historically low company stock prices. The CPA failed to record compensation expenses for the backdated options that were granted between 1999 and 2007. The CPA complied with the terms of suspension and was reinstated with the requirement that their work will be reviewed by the independent audit committee of any company they work for in the future. The release indicates that the CPA is not seeking to appear or practice before the SEC as an independent accountant at this time.

**"Gatekeepers, such as accountants ... are often the first lines of defense against misconduct. When they fail to live up to their obligations, investors and the integrity of our markets suffer."**

Gurbir S. Grewal,  
Director, Division of Enforcement  
July 21, 2022  
Testimony on "Oversight of the  
SEC's Division of Enforcement"  
Before the United States House  
of Representatives Committee on  
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# Notable Q3 2022 AAER for “Recommended Reading”

While reviewing all 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 and colleagues. For this quarter, we selected the following AAER to highlight.

***Accounting and Auditing Enforcement Release No. 4330 / September 2, 2022, In the Matter of CHS Inc.***

## *“Trust but Verify:” The Ultimate Internal Control Rule*

The SEC recently published an AAER for the settlement of an action against CHS Inc. (“CHS”). The matter, which was settled with the issuance of a cease-and-desist order, arose out of violations of the reporting, books and records, and internal accounting controls provisions of the securities laws by CHS.

Of significance, CHS’s problems resulted from the fraudulent acts of only one individual. However, the consequences for his actions impacted 26 current or former CHS officers and directors, who were forced to return incentive compensation for the erroneous financial reporting periods.

Unfortunately, the situation could have been avoided if proper internal controls over financial reporting were in place at CHS; in particular, the adherence to segregation of duties as well as having technical knowledge in, or available to, the finance function. As with many control functions, “trust but verify” is the essential mantra.

Below is a brief overview of CHS’s business, how the problem arose, and importantly, internal control considerations for registrants to avoid similar problems.

## *Overview of CHS’s Business*

CHS is headquartered in Inver Grove Heights, Minnesota, and is an agricultural cooperative that provides grain, food, agronomy, and energy resources to businesses and consumers on a global scale. CHS has a unique ownership structure and has publicly issued preferred stock, but not common stock. The entity is a cooperative that is majority owned by local cooperatives that are, in turn, owned by half a million farmers and ranchers. The balance of CHS’s equity is owned by individual agricultural producers.

According to the release, CHS operates in three reportable segments—Energy, Nitrogen Production, and Ag (purchase and further process or resell grains and oilseeds). Within the Ag segment is the North American grain marketing operations, the business unit most relevant to this matter. As part of this business unit, CHS enters into contracts with railroads to transport commodities, such as grain, throughout North America.

**“We’ve been given a hard, but important job: to impartially enforce the laws and rules on the books for the benefit of investors and our markets.”**

Gurbir S. Grewal,  
Director, Division of Enforcement  
September 9, 2022  
Remarks at SEC Speaks 2022



## *How the Problem Arose*

From at least 2014 through 2018, an employee manipulated the quantities and values of these rail freight contracts. The release indicates that the employee was able to both execute trades and determine their valuations without anyone else verifying the fair value amounts reported in CHS's financial statements. As a result of the employee's misconduct, CHS filed materially false financial statements with the SEC and later restated its net income for its fiscal years 2014 through 2018.

The problem was discovered in August 2018, when a senior employee reviewed the contract information and realized the freight contract values were grossly overstated. By early September, CHS determined there was no legitimate basis for the inflated values.

Instead of providing objective, market-based prices to CHS's accounting group, the individual had reported values that were supported by his "personal view of what the shuttle contracts would eventually be worth." Adding to the problem, CHS's subsequent investigation discovered numerous fictitious rail freight contracts that the employee added to the company's books and records.

## *Internal Control Considerations*

Per PCAOB Auditing Standard No. 5, paragraph A5, internal control over financial reporting is a "process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP."

As evident from the definition, many people bear responsibility for an entity's internal controls. At the core of a well-designed control system are checks and balances on the information being shared and reported. Essential among such checks and balances is the segregation of duties. The PCAOB defines the segregation of duties as "assigning different people the responsibilities of authorizing transactions, recording transactions, and maintaining custody of assets ... to reduce the opportunities to allow any person to be in a position to both perpetrate and conceal errors or fraud in the normal course of his or her duties."

Proper segregation of duties ensures that more than one person is required to complete the tasks in a business process. In other words, no one person should be responsible for all tasks in a process. This is exactly how the problem arose at CHS; one employee executed the rail contracts, had custody over the contracts, and had complete control over the contracts' fair value for financial reporting purposes. The opportunity and bias to report favorable valuations is overwhelming, especially to produce favorable financial results and impact bonus arrangements.

**"[G]atekeepers must foster a proactive culture of compliance and responsibility – both for themselves and for their clients."**

Gurbir S. Grewal,  
Director, Division of Enforcement  
July 21, 2022  
Testimony on "Oversight of the SEC's Division of Enforcement"  
Before the United States House of Representatives Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets

### *Lessons Learned to Avoid Similar Problems*

At CHS, proper segregation of duties failed for two major reasons. First, one person should never be solely responsible for the negotiation, execution, and custody of any external financial relationship. At CHS, having such complete control is what allowed the individual to fabricate contracts. Noting the legal nature of these agreements, the CHS law department should have been involved and acted as a control over the existence and validity of the arrangements. For entities without law departments, another responsible party should be identified. Second, the valuations should have been performed by the finance team, with, if needed, an independent expert, not solely by the all-powerful individual.

Even the best segregation of duties and controls may be overridden by collusive employees, but the risk of fraud is certainly lessened by having such controls in place. In addition, if a process is so material to the business and/or financial results, additional approval levels and controls should be considered and employed to ensure the reliability of financial reporting and the preparation of financial statements for external purposes is in accordance with GAAP.

The most common reaction from companies after a financial reporting failure occurs due to a lack of segregation of duties is related to their lack of resources or lack of technical competencies. CHS may have had these very same reactions and may have had an already overloaded finance and accounting group. The way to avoid similar problems is to identify if such weaknesses exist and have compensating controls and oversight. Simply recognizing and knowing your weaknesses is essential for mitigating the risks they create.

The most common incompatible responsibilities in an accounting system are authorization and approval for transactions, custody of assets, recording of transactions, and performing account reconciliations. The opportunity to commit fraud will increase at any organization when two or more of these responsibilities are combined and little to no oversight or compensating controls exist. In summary, robust internal controls, including segregation of duties, along with a system of “trust but verify” checks and balances are essential to safeguarding assets and producing reliable financial results.

## Prior Period Comparison: Quarter to Quarter

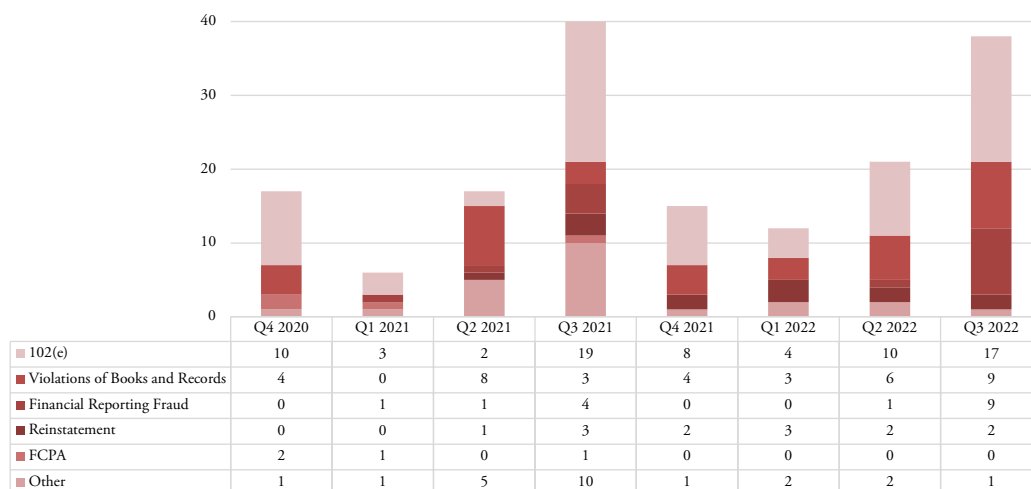
As described in the section titled “Our Process and Methodology,” AAERs are intended to highlight certain actions, and they do not represent an exhaustive and complete compilation of all actions that fit into the definitions provided by the SEC for the various AAER classifications. That said, comparisons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

**Total Number of AAERs by Quarter**



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

### Quarter to Quarter AAER Comparison Q4 2020 through Q3 2022



Overall, we made the following observations:

- Rule 102(e) actions, consistently one of, if not the most common type of AAER in recent periods, account for nearly 45% of this quarter's releases. Accountants that are penalized under Rule 102(e) typically violate professional standards or federal securities laws, and, as a result, temporarily or permanently lose the privilege to practice or appear before the SEC. Firms that are sanctioned under Rule 102(e) can be censured either temporarily or permanently. The number of reinstatements in fiscal year 2022 was more than twice that of fiscal year 2021.
- As noted previously, the number of AAERs categorized as Financial Reporting Fraud significantly increased this quarter to nine, compared to only one in the prior three quarters combined. In addition, the total number of AAERs within this category for fiscal year 2022 has nearly doubled from fiscal year 2021.
- Releases categorized as FCPA-related continued to decline in number, with none reported in fiscal year 2022 and only four reported in fiscal year 2021.
- Consistent with previous year trends, Q3 continues to have the highest number of releases, as September 30th marks the SEC's fiscal year end. The SEC released 38 AAERs this quarter, roughly the same number of AAERs released in the previous three quarters combined. We also note that the total releases in fiscal year 2022 are consistent with the total releases in fiscal year 2021, 86 and 80, respectively.

**"[T]he [SEC] brings hundreds of civil enforcement actions and obtains meaningful relief, including disgorgement of ill-gotten gains and civil monetary penalties – which are frequently returned to harmed investors."**

Gurbir S. Grewal,  
Director, Division of Enforcement  
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For more information, please contact LeeAnn Manning at 617.586.1076 or Marni Kaufman at 617.586.1072.

#### **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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