



*Summary of Accounting and  
Auditing Enforcement Releases  
for the Year Ended  
December 31, 2023*

ANNUAL REPORT 2023

## CONTENTS

<b>Highlights .....</b>	<b>1</b>
<b>Our Process and Methodology .....</b>	<b>1</b>
<b>Major Observations and Insights: AAERs for the Twelve Months Ended December 31, 2023 .....</b>	<b>2</b>
<b>SEC and PCAOB Auditing-Related Enforcement and Disciplinary Actions .....</b>	<b>3</b>
<b>The Q4 2023 AAERs: Summary by Category and Insights from the Releases.....</b>	<b>4</b>
<b>Notable Q4 2023 AAER for “Recommended Reading” .....</b>	<b>6</b>

### *Introduction and Our Objective*

We are pleased to present you with our summary of the U.S. Securities and Exchange Commission’s (“SEC,” “Commission”) Division of Enforcement’s Accounting and Auditing Enforcement Releases (“AAERs”) for the quarter and calendar year ended December 31, 2023.

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

The Division of Enforcement at the SEC is a law enforcement agency established to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As such, the actions it takes and the releases it issues provide useful interpretations and applications of the securities laws.

For those involved in financial reporting, SEC releases concerning civil litigation and administrative actions that are identified as related to accounting and auditing are of particular 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  
JANUARY 2024

# Highlights:

- The SEC released a total of 111 AAERs in calendar year 2023, a 26% increase from calendar year 2022, resulting in nearly \$400 million in total penalties.
- In Q4 2023, the SEC released only nine AAERs, the second lowest number of AAERs released in a single quarter in the past ten years. Additionally, there were no releases this quarter related to the Foreign Corrupt Practices Act (FCPA), a notable decrease compared to the four FCPA-related AAERs issued last quarter.
- Only one Reinstatement was issued this calendar year, marking a sharp decrease from the average of seven Reinstatements per year for the previous five calendar years. This quarter, a CPA was reinstated following a three-year suspension for filing false and misleading financial statements.
- The SEC charged five companies for failing to adequately disclose the reasoning when requesting extensions for quarterly or annual reporting filings. Of note, the SEC previously charged eight companies for similar violations in April 2021.
- In our Recommended Reading section, we summarize the AAER related to an accounting fraud at Brooge Energy and offer insights on the company's restatement.

## 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).*

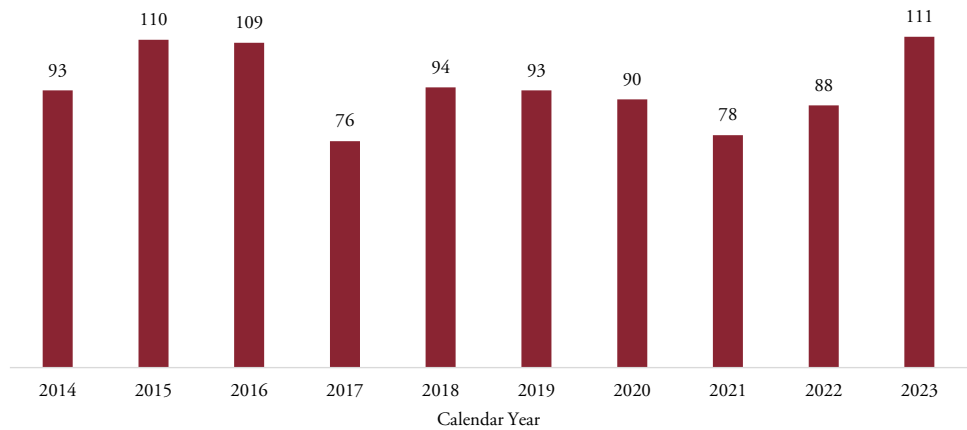
*As part of our review, we gathered information and key facts, identified common attributes, and noted trends. Applying our professional judgment to the information provided by the SEC, we sorted the releases into major categories (i.e., Rule 102(e) Actions, Violations of Books and Records, Financial 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.

# Major Observations and Insights: AAERs for the Twelve Months Ended December 31, 2023

For the twelve months ended December 31, 2023, the SEC issued 111 AAERs, representing a 26% increase from last year.

Looking Back at Total AAERs in Preceding 10 Years



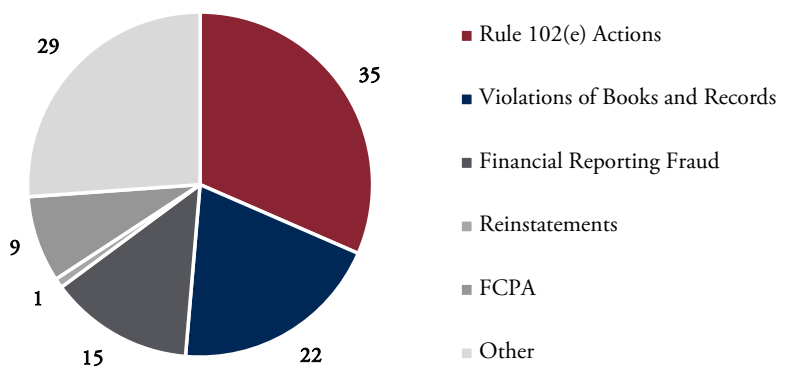
“The Division’s many accomplishments over the past fiscal year reflect the efforts of a staff that remains steadfastly focused on fulfilling the SEC’s investor protection mandate.”

Sanjay Wadhwa,  
Deputy Director, Division of  
Enforcement  
November 14, 2023  
SEC Announces Enforcement  
Results for Fiscal Year 2023

Of significance, nearly one third of the actions brought forth by the SEC in calendar year 2023 related to Rule 102(e) Actions, consistent with prior year trends. Rule 102(e) authorizes the SEC to issue temporary or permanent suspensions or disbarments of professionals from practicing before the SEC. In addition, as it relates to an entity, the SEC can also order censures or limitations on activities under Rule 102(e).

The following chart illustrates the total number of AAERs in calendar year 2023 by category:

Total 2023 AAERs by Category



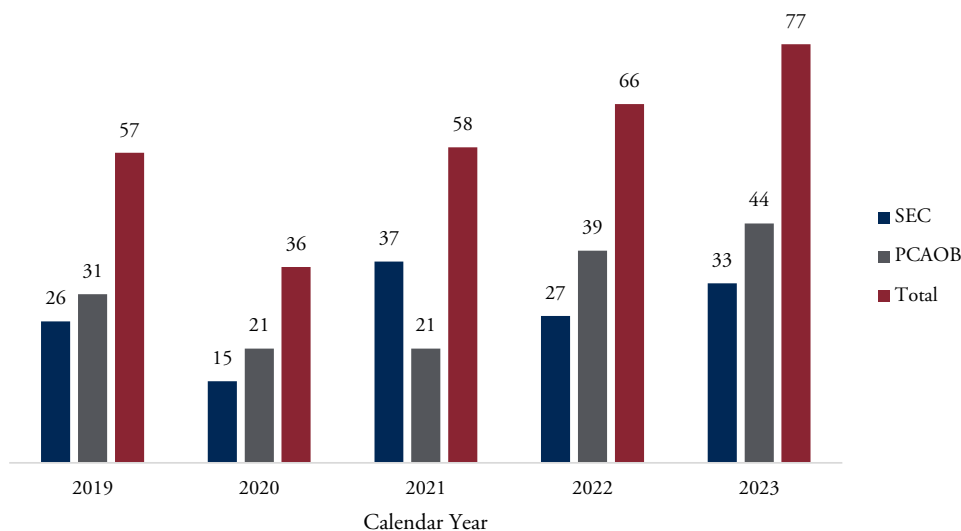
Notably, in August, the SEC charged five companies for failing to disclose that their requests for an extension to file quarterly or annual reports were the result of an anticipated restatement or correction of previous reporting. According to the releases, each company filed the SEC's Form 12b-25 "Notification of Late Filing" ("Form NT"), requesting a filing extension, and subsequently announced a restatement or correction within 3-21 days of filing the form. The releases allege that the companies did not disclose these anticipated restatements in their form, and as a result, each company was ordered to pay a penalty. A summary of one of these releases is provided below:

- ***The Commission charged a holding company for failing to properly disclose the reason for late filing.*** According to the release, in November 2022, the holding company filed a Form NT requesting a filing extension for its third quarter FY 2022 Form 10-Q. Four days after filing the form, the holding company filed an 8-K disclosing to investors that previously filed financial statements for FY 2020 and FY 2021 should no longer be relied upon. The release alleges that the Form NT did not adequately disclose that the delay was the result of the anticipated restatement and ongoing correction of errors. The release further alleges that the form failed to acknowledge anticipated significant changes in operation for the quarter. The holding company was ordered to pay a civil penalty of \$60,000.

## SEC and PCAOB Auditing-Related Enforcement and Disciplinary Actions

The SEC and PCAOB share the responsibility of enforcing disciplinary actions against auditors who violate SEC rules and professional standards. In calendar year 2023, auditing-related enforcement actions brought by both the SEC and PCAOB observed heightened activity with an annual increase of 22% and 13%, respectively. The total number of auditing-related enforcement actions brought by the SEC and PCAOB increased by 17% as compared to calendar year 2022 and has generally trended upwards year-over-year, except for a drop in calendar year 2020.<sup>2</sup>

### SEC and PCAOB Auditing-Related Enforcement and Disciplinary Actions



<sup>2</sup> As the Commission issues certain AAERs related to logistical aspects of SEC proceedings, some releases may be related to the same violation.

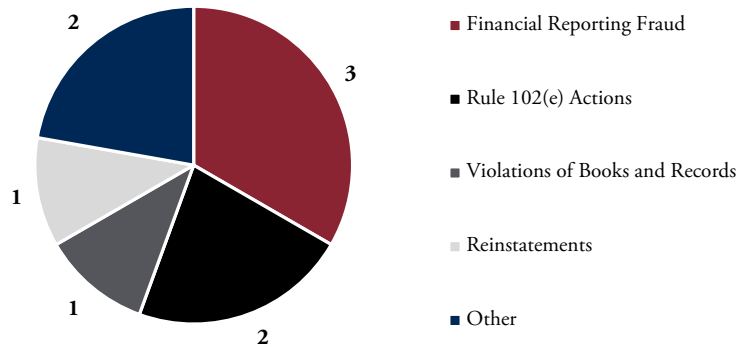
"The PCAOB's vital work ensures that investors ... can invest in our markets with the confidence that all issuers are abiding by the highest standards of financial reporting ..."

Commissioner Jaime Lizárraga,  
December 13, 2023  
Robust Financial Reporting and  
Effective Gatekeepers: In Support  
of the PCAOB's FY 2024 Budget

# The Q4 2023 AAERs: Summary by Category and Insights from the Releases

In Q4 2023, the SEC issued nine AAERs, including a Reinstatement for the first time this calendar year. Of note, enforcement releases related to Financial Reporting Fraud were the most prevalent this quarter. The following graph further illustrates total Q4 2023 AAERs by category:

Q4 2023 AAERs by Category



“A critical feature of our capital markets is that investors rely on public company disclosures, including their financial results.”

Chair Gary Gensler,  
December 13, 2023  
SEC Approves 2024 PCAOB Budget  
and Accounting Support Fee

## Financial Reporting Fraud

Three AAERs related to Financial Reporting Fraud were released this quarter. Below are summaries of two releases within this category, and the third release is discussed within our Recommended Reading section of this report:

- The Commission obtained a final judgment against a former senior executive of a seismic data company for his role in a multi-million dollar accounting fraud.*** According to the amended complaint and AAER, the former CEO/COO and three other senior executives caused the company to file materially false and misleading public statements by improperly recording revenue related to a series of acquisition contracts totaling approximately \$140 million with a purportedly unrelated Alaskan-based company that was controlled by two former executives. The executives allegedly inflated the company’s revenue by approximately \$100 million despite the Alaskan company’s inability to pay the purported revenue. Furthermore, the amended complaint alleges that the executives misappropriated \$12 million from the company, routing about half of the funds back to the company to create the false impression that the Alaskan company was paying for seismic data and then keeping the remaining funds for themselves. The former CEO/COO consented to the entry of a final judgment and was ordered by the Commission to pay approximately \$260,000 in disgorgement and prejudgment interest. Additionally, the former CEO/COO was ordered to reimburse the company in the amount of approximately \$440,000. Litigation proceedings related to the actions of the other former senior executives allegedly involved are ongoing.

- ***The SEC charged a CEO and three affiliated U.S.-based entities in connection with a multi-year fraudulent scheme involving inflation of financial performance metrics.*** According to the complaint and AAER, since at least 2019, the CEO led a scheme to fabricate financial statements and other documents of the three affiliated entities and their Nigerian subsidiaries. For example, one entity allegedly filed a form 10-K for FY 2022 reporting a cash and cash equivalents balance of \$461.7 million for one of its Nigerian subsidiaries, despite the subsidiary's bank accounts only having a combined balance of less than \$50. The complaint further alleges that the CEO and entities under his control fraudulently obtained hundreds of millions of dollars in money or property through these schemes, and that the CEO utilized these funds for his personal benefit, including for the purchase of luxury cars, travel on private jets, and the attempted purchase of a sports team. As part of the SEC's emergency application, it ordered a temporary restraining order against the defendants, which included freezing the CEO's assets and prohibiting the entities from destroying, altering, or concealing documents and records as the investigation is ongoing.

### *Rule 102(e) Actions*

There were two releases this quarter related to Rule 102(e) Actions. Rule 102(e) Actions involve the temporary or permanent censure and denial of the privilege of appearing or practicing before the SEC. The following is a summary of one of the releases this quarter related to Rule 102(e) Actions:

- ***The SEC suspended an accounting manager of a specialty storage rental services company for engaging in insider trading practices.*** According to the original complaint, the accounting manager learned that the company was in negotiations to be acquired by another public entity on or around February 2, 2021, and then purchased shares of common stock in both his personal and relative's accounts. Additionally, the accounting manager allegedly informed two other relatives, who then also purchased shares of the company's common stock. Subsequently, on April 15, 2021, when the company announced that it would be acquired, the accounting manager and his relatives sold their shares. As a result, the accounting manager was suspended from appearing or practicing before the Commission as an accountant and will be eligible to apply for reinstatement in five years.

### *Violations of Books and Records*

We classified one release this quarter resulting in \$6 million in civil penalties as a Violation of Books and Records. Below is a summary of the release within this category:

- ***The Commission imposed sanctions against a Canadian chartered bank for failing to maintain adequate internal accounting controls.*** According to the release, from 2008 through 2020, the bank experienced an increase in internally developed software ("IDS") spending costs but did not adequately develop its internal control environment at the same pace. As a result, the bank had internal accounting control deficiencies that resulted in a failure to assess impairment or amortization of certain assets. According to the release, the bank participated in remedial efforts to improve and enhance its internal accounting controls, including but not limited to, conducting capitalization rate studies on a quarterly basis as well as centralizing the IDS capitalization rate assessment process. As a result of the bank's conduct, the Commission ordered it to pay a \$6 million civil penalty.

**"Protecting investors from fraud by their financial advisers is a priority for the SEC, as is protecting the market from false press releases aimed at manipulating the stock of a publicly traded company for personal gain and leaving unknowing investors to lose out."**

Andrew Dean,  
Co-Chief of the Asset Management  
Unit  
November 29, 2023  
SEC Charges Phoenix-Area Real  
Estate Fund Adviser Jonathan  
Larmore with \$35 Million Fraud

## Reinstatements

There was one release in Q4 2023 related to Reinstatements to Appear and Practice before the SEC. The following is a summary of this release:

- ***The SEC reinstated a Certified Public Accountant (“CPA”) to appear and practice before the Commission.*** According to the original June 2017 release, while serving as the controller and accounting manager of an infrastructure and telecommunication services company, the CPA allegedly misapplied GAAP and relied on inaccurate invoices as a basis to recognize revenue, which resulted in the premature recognition of revenue and filing of false and misleading financial statements. As a result, the individual was ordered to pay a civil money penalty of \$25,000 and was suspended from practicing before the Commission as an accountant for three years, after which he would be eligible for reinstatement. The CPA complied with the terms and conditions of his suspension and was reinstated with the requirement that his work be reviewed by the independent audit committee of any company he works for in the future.

“Investors are entitled to know material information about ... the companies in which they invest. The SEC is committed to holding bad actors accountable.”

Monique C. Winkler,  
Director of the SEC’s San Francisco  
Regional Office  
December 19, 2023  
SEC Charges Former CEO of Medical  
Device Startup Stimwave with \$41  
Million Fraud

## Notable Q4 2023 AAER for “Recommended Reading”

Certain AAER 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.

### ***Accounting and Auditing Enforcement Release No. 4480 / December 22, 2023, In the Matter of Brooge Energy Limited***

#### **Reasons to Restate the Restatements**

The United States Securities and Exchange Commission recently issued an AAER announcing a settlement with Brooge Energy Limited (“Brooge”) related to what the SEC referred to as an “accounting and offering fraud” arising out of Brooge’s misstated financial statements from 2018 through 2020. Brooge is a publicly traded company that owns and operates an oil storage facility in Fujairah, United Arab Emirates (“UAE”).

Brooge became a public entity through a special purpose acquisition company (“SPAC”) transaction in December 2019, with its shares trading on the NASDAQ exchange. Per the SEC, Brooge’s alleged fraud started in 2018, prior to the SPAC transaction, and continued in the periods thereafter.

#### ***The Alleged Accounting Fraud Scheme***

Per the SEC, the alleged fraud at Brooge involved fabricating customers to inflate revenues from the use of its oil tanks and related services, preparing false invoices, involving a related party to pay the phony accounts receivable and lying to auditors as well as the SEC during its examination.

To effectuate the alleged fraudulent scheme, Brooge received approximately \$74 million from a related party and accounted for the cash as payments for the fabricated invoices. Brooge allegedly deposited the cash into its bank account and removed the fraudulent accounts receivable amounts from its books, as if cash was paid by the fictitious customer.



Despite the alleged severity of the alleged misconduct, the SEC's settlement involves a cease-and-desist order, a \$5 million penalty, the appointment of an independent ethics and compliance consultant, and sanctions against two former officers.

Of significance, Brooge's fabricated revenues, as shown in a table in the AAER, approximate the \$74 million cash received from the related party.

### *Brooge's Restatement Accounting and Disclosures*

Remarkably, Brooge's restated financial statements accounted for and disclosed the \$74 million as an "Other Payable" in the restated financial statements, as if the monies were an obligation owed to the related party. Similar descriptions and restatement accounting for the related party cash payments are found in the footnotes for each of Brooge's restated financial statements for the years ended December 31, 2018 through 2020, as well as in the subsequent reporting periods' footnotes for Brooge's financial statements including for the year ended December 31, 2022.

The following paragraphs are from Footnote 19, *Other Payable*, in the Brooge Energy Limited Consolidated Financial Statements as of December 31, 2022, and provide a discussion regarding Brooge's restatement accounting for the \$74 million.

*"In connection with the internal examination, the Group conducted a comprehensive review of the accounting policies, procedures, and internal controls related to revenue recognition. All available customer contracts were assessed based on International Financial Reporting Standard (IFRS) 15 'Revenue from Contracts with Customers' and IFRS 16 'Leases'. This review identified that the funds received from a related party viz. M/s AI Brooge International Advisory LLC do not qualify to be recognised as revenue. Due to the qualitative nature of the matters identified in the Group's internal examination, including the number of years over which the non-qualified revenue was recognized the Group determined that it would be appropriate to rectify the misstatements in the previously issued consolidated financial statements by restating such consolidated financial statements. Accordingly, an amount of USD 74,253,965 which represents funds received from BIA, was reversed from revenue and re-classified as Other payable under Liabilities for the financial years from 2018 to 2020.*

*The Management do not expect to settle these amounts using any of its current assets or any existing resources in the foreseeable future. Pending its potential receipt of confirmation or adequate supporting documentation from the party, the Group has taken a conservative approach to recognise this as a liability. The Group continues to assess this liability and will evaluate whether there arises any obligation or it is discharged or cancelled or expires or is swapped out for one with significantly different terms or when the terms of are significantly modified, such an exchange or modification is recognized as a derecognition of the old liability and the recognition of a new liability or as equity contribution, as applicable and the difference in the respective carrying amounts will be recorded in the consolidated statement of either other comprehensive income or directly as equity as applicable."*

### *Possible Restatement Corrections*

Even with the qualifying language in the footnotes regarding the uncertainties about future modifications and adjustments, there are concerns, as described below, with Brooge's restatement accounting treatment and footnote disclosures.

**"Investors should be able to trust public companies to issue truthful and accurate financial statements, and we will hold accountable any executives who abuse that trust and defraud investors."**

Scott A. Thompson,  
Associate Director of Enforcement  
for the SEC's Philadelphia Regional  
Office  
September 28, 2023  
SEC Charges Former Pareteum  
Executives with Accounting and  
Disclosure Fraud

*Footnote Mischaracterizes the Use of the Related Party Cash*

The revenue reversal arises from fabricated invoices for which no service was performed. However, the restatement footnote states that the funds received from a related party “do not qualify to be recognised as revenue.” This statement is factually flawed as the funds were never part of the revenue recognition process.

Per the SEC, Brooge disguised the related party cash receipts as customer payments of the fabricated accounts receivables, after fraudulently reporting revenue based on fictitious invoices. This description in the restatement footnote should be corrected so that the disclosure is consistent with the facts as described in the AAER.

*The Term “Non-qualified revenue” is Misleading*

Referring to the falsified revenues as “non-qualifying” implies that there was an error in applying the IFRS revenue recognition standards. The use of this phrase combined with the discussion in the footnote that the independent examination related to compliance with IFRS 15 is misleading and should be corrected to reflect the facts as described in the AAER. The misstatements did not arise from an error applying accounting standards, but instead resulted from improper conduct.

*Lack of a Proper Basis for “Other Payables” Classification*

The classification of the funds as Other Payables, even with the qualifying language in the footnote, creates a misleading impression that the monies are an obligation owed to the related party. As described in the disclosure, there is no documentation to evidence the intent of the parties involved in providing and receiving the funds.

Other payables are amounts due to vendors and others that are not trade payables. For the amounts to be payment obligations, there must be an intent for them to be paid. The restatement footnote language that management does “not expect to settle these amounts using any of its current assets or any existing resources in the foreseeable future” represents a lack of such intent and contradicts the classification of the funds as other payables.

When applying professional skepticism, the lack of available documentation appears intentional to avoid leaving a trail that would be inconsistent with the scheme. To classify the funds as an obligation for repayment based on the principle of conservatism is debatable and may not be deemed conservative by parties with competing interests for recoveries from the alleged fraud.

Unique circumstances often require special treatment and disclosures, and financial reporting should always reflect the substance of events and transactions. Due to the lack of documentation, and the considerations described above regarding the fraudulent use of the funds, the funds would be more properly presented as a line item between the liabilities and equity section classified as Undocumented Related Party Cash Transfer, a description which is as factual as possible. This classification and placement, along with robust footnote disclosure regarding the facts and uncertainties, will provide the users of the financial statements with the information required to fully understand the situation without ambiguity or presenting a misleading classification.

**“Thanks to the diligent work of SEC staff, we were able to stop this accounting and offering fraud in its tracks before domestic investors suffered significant harm.”**

Osman Nawaz,  
Chief of the Complex Financial  
Instruments Unit  
December 22, 2023  
SEC Charges UAE-Based Brooge  
Energy and Former Executives  
with Fraud

### *Possible Omission of Contingent Liabilities Disclosures*

The only contingent liabilities reported in the restated financial statements and subsequent periods through December 31, 2022 (all filed with the SEC in April 2023), relate to capital commitments for construction projects.

Under IFRS, “contingent liabilities are possible obligations whose existence will be confirmed by uncertain future events that are not wholly within the control of the entity. An example is litigation against the entity when it is uncertain whether the entity has committed an act of wrongdoing and when it is not probable that settlement will be needed.” For contingent liabilities, unless the possibility of an adverse outcome is remote, the liability should be disclosed in the footnotes to the financial statements.

Importantly, based on the discussion in the AAER, the \$74 million is a major element of the alleged fraud. As such, there would appear to be risk that that the U.S. Department of Justice (“DOJ”) may have a claim to the funds based on the Asset Forfeiture Program. Per the DOJ, one of the primary goals of this program is to “punish and deter criminal activity by depriving criminals of property used in or acquired through illegal activities.”

Subject to understanding more about potential actions by the DOJ and whether it has the ability or intent to seek recovery of the funds, the restatement should be evaluated whether it has properly vetted all contingent liabilities, especially when noting that per the AAER, the funds appear to meet the definition of being “used in ... illegal activities.” In addition, there is no mention regarding shareholder or other lawsuits.

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

#### **ACKNOWLEDGEMENT**

We wish to acknowledge the valuable contribution to this analysis by Michael Venezia, Delaney Eagle, Marni Kaufman, and Joseph Floyd.

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

#### **ABOUT Floyd Advisory**

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

#### **New York**

1 Penn Plaza, Suite 3310  
New York, NY 10119  
212.845.9018

#### **Boston**

155 Federal Street, 11th Floor  
Boston, MA 02110  
617.586.1040