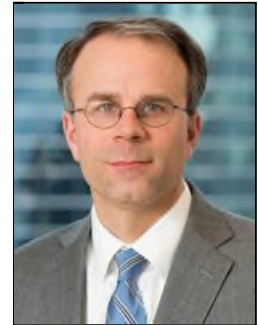


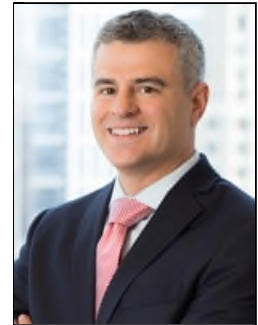
How SEC Settlements Affect Auditors' Careers

Law360, New York (March 18, 2016, 10:57 AM ET) -- Since U.S. Securities and Exchange Commission Chair Mary Jo White's announcement of "Operation Broken Gate" in October 2013, the SEC has increasingly prioritized enforcement actions against auditors, especially under SEC Rule of Practice 102(e), which was codified in Section 602 of Sarbanes Oxley. In 2015, the staff brought charges against and settled a wide range of Rule 102(e) cases, including against auditors from prominent national firms. In fact, the SEC charged 22 individuals under Rule 102(e) in just the last four months of 2015 and seven through mid-March 2016. Because all indications are that this trend is continuing in 2016, and because most Rule 102(e) cases are resolved by settlement, it is critical for auditors to understand the complete impact of a settlement on an auditor's career.



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The SEC launched "Operation Broken Gate" to hold accountable those auditors who have intentionally or negligently violated professional auditing or accounting standards, and thus have failed in their role as "gatekeepers." Since then, the SEC has aggressively pursued enforcement actions against auditors under SEC Rule of Practice 102(e), often as the result of an investigation into accounting fraud at an issuer or an inspection by the Public Company Accounting Oversight Board. Where the SEC believes that an auditor violated the professional standards and thus should be charged under Rule 102(e), the SEC typically seeks sanctions such as censures, cease-and-desist orders, fines, remedial actions or undertakings, and most critically, bars from practicing before the SEC for a specific number of years, after which the auditor may apply for reinstatement. Practice bars are of tremendous significance to an auditor's career because under the SEC's broad view, a bar generally prohibits any work on an audit or preparation of financial statements of a public company or its affiliates.



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Although auditors often settle Rule 102(e) actions, rather than litigate through an administrative trial, it is essential to understand the full range of consequences of the terms of potential settlements of Rule 102(e) charges. The objective of such a settlement may be to accept only a short practice bar or avoid a practice bar altogether by accepting lesser penalties, such as a censure or fines. In a negotiated resolution of Rule 102(e) charges, an auditor typically agrees to accept certain sanctions without admitting or denying the SEC's allegations or recitation of the underlying facts. At first blush, approaching a settlement in this manner would seem to afford auditors an opportunity to preserve their careers and professional practice. The reality is often far more challenging.

Rule 102(e) resolutions are themselves blunt instruments that often carry significant risks to an auditor's career beyond the specific terms set forth in a settlement. To that end, when considering resolving potential SEC charges against an auditor, it is necessary to

consider the impact of a negotiated resolution on an auditor's reputation, especially on an audit committee's acceptance of an auditor, as well as the risks of additional sanctions by other regulatory bodies, such as the PCAOB and state licensing authorities.

Rule 102(e) settlements are public and easily accessible because they are posted on the SEC's website and often are announced by a press release. The SEC order that documents the settlement not only contains the agreed-upon sanction, but also explains through a narrative summary the SEC's view of the auditor's violations of professional standards. Although the auditor is often able to negotiate to some degree the scope of the SEC's statement of facts, the order will nevertheless largely describe the auditor's conduct from the SEC's perspective.

Lawyers representing auditors must consider the likely negative impact of any Rule 102(e) settlement on an audit committee's acceptance of the auditor. Regardless of the auditor's seniority, most audit firms and auditors would consider it a best practice (if not a duty) to bring a settlement relating directly to the professional responsibility of the auditor to the attention of the audit committees of the sanctioned individual's existing or potential clients. An audit committee's duty to the company's shareholders and the availability of other qualified auditors may mean that what may be perceived as the risk of hiring an auditor publicly sanctioned by the SEC is unacceptable. Thus, for example, even a "short" practice bar or lesser penalty may effectively operate as a permanent bar on the auditor's practice.

Another concern is the potential for additional investigations due to the overlap in enforcement responsibilities between the SEC and the Public Company Accounting Oversight Board. Although the PCAOB's statutory mandate requires that it maintain a certain level of cooperation with the SEC, and regular coordination does occur between the two regulators, a settlement with the SEC does not preclude the PCAOB from commencing or continuing an investigation into the same activity and seeking its own penalties, which can include censures, fines and bars on public company accounting work. Thus, there is some uncertainty about whether a settlement with the SEC will bring finality to the matter for the auditor.

Finally, a significant consideration is the effect of a settlement on the auditor's license to practice as a certified public accountant. Most states require auditors to disclose any professional disciplinary action to their state board of public accountancy, either as an affirmative duty or in connection with periodic license renewals. Once they learn of SEC settlements, state boards are able to open their own investigations and have the authority to revoke or suspend auditors' CPA licenses, even where the SEC sanctions did not involve practice bars. Examples abound of state boards revoking or suspending an auditor's CPA license for periods at least equal to the SEC's practice bar. To make matters worse, an auditor's loss of ability to practice as a CPA may effectively prolong the length of any practice bar because a current CPA license is a prerequisite to reinstatement to practice before the SEC. These possibilities entail great risk for an auditor seeking to settle with the SEC.

As Rule 102(e) enforcement actions continue in 2016, it is important to keep in mind that without proper assessment of the repercussions of a resolution with the SEC, an auditor may underappreciate the full exposure and career risks of settling, rather than litigating, these actions.

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