

In a Break With Prior Practice, PCAOB Protects the Identity of Public Company in Disciplinary Actions Against Auditors

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Securities Litigation and Enforcement

On February 26, 2019, the Public Company Accounting Oversight Board (“PCAOB”) for the first time issued disciplinary orders against auditors that protected the identity of the auditors’ client. In the past, the PCAOB had a practice of identifying the audit client by name in disciplinary orders if the matter involved violations of auditing standards by the client’s auditor. Under the old practice, the PCAOB would protect the identity of the audit client only when the discipline arose out of a failure of the auditor to cooperate in a PCAOB investigation. We believe that the recent orders could indicate a new approach by the PCAOB going forward.

This positive development stems from Covington & Burling’s request to the PCAOB that it adopt the approach to identifying audit clients taken by the U.S. Securities and Exchange Commission (“SEC”) in its administrative orders. In contrast to the PCAOB’s historical practice, the SEC, which also has authority to discipline auditors for improper professional conduct, often excludes the names of entities or individuals who are not parties to an enforcement action. In actions against auditors, the SEC will often refer to the audit client as “Issuer A” or “Issuer B” in its administrative orders. Covington identified at least fifteen SEC orders issued between 2013 and the present in which non-party audit clients were provided anonymity.

Although the rationale behind its historical approach is unclear, the PCAOB likely saw value in identifying audit clients by name to provide specific context to the audit failures alleged in its disciplinary orders or because it believed that anonymity was inappropriate for audit clients that had accounting failures or issued restatements. This approach, however, does not afford audit clients the opportunity to weigh in on the description of their conduct in PCAOB disciplinary orders since the clients are not parties to the proceedings. With the new orders issued this week, it appears that the PCAOB has chosen to mirror the SEC’s practice of denying non-parties a role in the disciplinary process but instead protecting their identities in the disciplinary orders.

It is unclear if the two recent disciplinary orders signal a sea change in the PCAOB’s approach to treatment of non-parties or a one-time exception to longstanding policy. We expect, however, that an answer to this question will emerge over the next year as additional disciplinary orders are issued.

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