

New PCAOB Guidance Confirms Change in Approach to Identifying Audit Clients in Auditor Disciplinary Orders

October 2, 2019

Securities Litigation and Enforcement

The enforcement staff of the Public Company Accounting Oversight Board (“PCAOB”) recently issued [guidance](#) for when it will recommend to the PCAOB disclosing the identity of non-party audit clients in disciplinary orders against auditors. The guidance confirms a policy change that we [identified](#) earlier this year. Previously, the PCAOB generally revealed the identity of an audit client in a disciplinary order, except for limited circumstances such as when the auditor failed to cooperate in a PCAOB investigation.

Now the PCAOB staff will recommend naming an audit client in a PCAOB enforcement action in three instances:

1. The audit client previously has disclosed or admitted to concerns regarding the financial statements or internal controls over financial reporting that are relevant to the matter (such as through a restatement);
2. A separate regulator has taken—or plans to take—public action against the audit client or its directors or officers related to the core facts relevant to the matter; or
3. The audit client or its directors and/or officers have been found in a public proceeding to have engaged in misconduct relevant to the matter.

These factors all involve circumstances where, at the time the disciplinary order is issued, the audit client’s identity is easily known from a public source other than the order or will be in the near future. Where an audit client would not otherwise be identifiable other than through the PCAOB disciplinary order, the PCAOB enforcement staff is much less likely to recommend disclosure. According to PCAOB Member J. Robert Brown Jr., the new approach “arises out of the notions of fairness, presumably recognizing that issuers are not regulated by the PCAOB and are not involved in the settlement,” and thus, unable to weigh in on the description of their conduct in PCAOB disciplinary orders.

This change in PCAOB policy follows Covington’s request to the PCAOB in 2018 that it adopt the approach to identifying audit clients taken by the U.S. Securities and Exchange Commission (“SEC”), which often excludes from its administrative orders the names of entities or individuals who are not parties to an enforcement action. 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.

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