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RECENT SEC ACCOUNTING AND AUDITING ENFORCEMENT RELEASES

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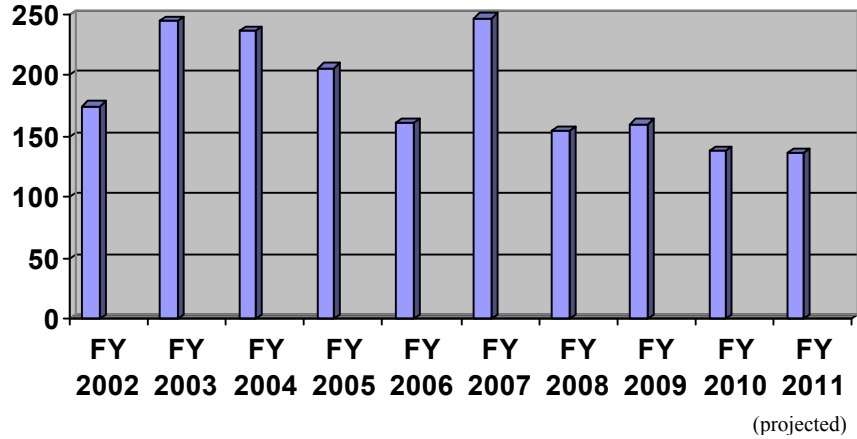
The Securities and Exchange Commission's enforcement program against accountants and auditors is tracked through the "Accounting and Auditing Enforcement Releases" or "AAERs" that the SEC posts on its Website.² AAERs announce new injunctive and administrative enforcement actions and thus, within their coverage area, generally duplicate Litigation Releases and Administrative Proceedings Releases. Like Litigation Releases and Administrative Proceedings Releases, AAERs report not only new enforcement cases but also follow-on cases brought against additional defendants. AAERs also mark unfolding developments (such as settlements) in cases that begin life as contested proceedings. As a result, a single enforcement investigation often will generate multiple AAERs.

AAERs can be viewed as a barometer of enforcement activity in the accountant/auditor enforcement space (which the SEC defines somewhat broadly, as explained in the Fiscal Year 2011 discussion below). Looked at in this way, the number of AAERs issued in the ten fiscal years ending on September 30, 2011 suggest that accounting and auditing matters are not a growth area in the Division of Enforcement's docket. Compared to the "boom" years of fiscal 2003 (244 AAERs), 2004 (236 AAERs), and 2007 (247 AAERs),

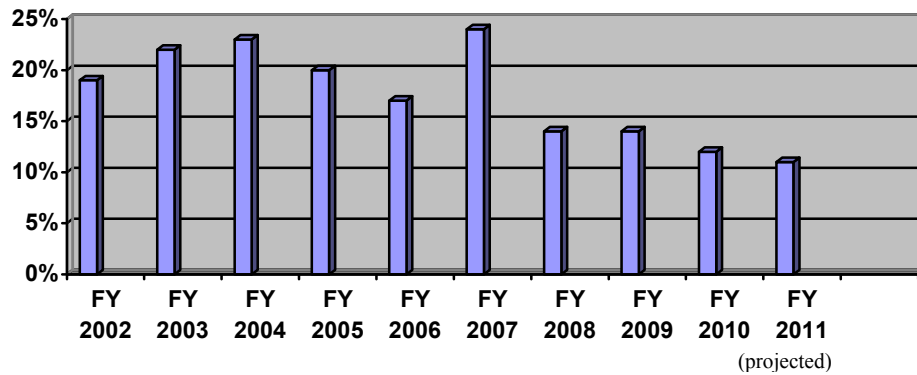
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² www.sec.gov, under "Information for ... Accountants."

the most recent four years³ have seen more modest activity in accounting and auditing cases, as shown by the graph immediately below:



Nor is the recent decline in AAERs a function of lessening enforcement activity overall; the following graph, which measures AAERs as a percentage of all Litigation Releases and Administrative Proceedings Releases in the same fiscal year, shows virtually the same pattern:



³ For Fiscal Year 2011, the projected total of 137 AAERs is 4/3 of the 103 AAERs issued through June 30. This type of linear projection is of course vulnerable to any burst of “fiscal year-end” cases brought during the fourth quarter. Unless the “fiscal year-end” phenomenon were skewed toward (or away from) accounting cases, it would not affect the percentages shown in the next graph, which uses figures for the first nine months of fiscal 2011 as both numerator and denominator to project fiscal year 2011 as a whole.

Summary of AAERs in Fiscal 2011 To Date

- In fiscal 2011 through August 15, 2011, the SEC issued 119 AAERs. Of these,
- 10 can be set aside as a measure of current enforcement activity because they announced the reinstatements of accountants (and, in two of the cases, non-accountant attorneys) who previously had been barred or suspended from practice before the Commission under SEC Rule of Practice 102(e);⁴ and
 - 17 were pure Foreign Corrupt Practices Act (“FCPA”) cases (in which the facts and the charges relate to accounting only in the attenuated sense that FCPA cases typically involve misstated corporate books and records and deficiencies in internal controls) or Regulation FD cases that involved no accounting issues at all.⁵

The remaining 92 AAERs have the following interesting characteristics:

- In 35 of the 92 AAERs, the underlying issue in the cases was revenue recognition, which shows the continuing importance of that topic in the SEC’s accounting/auditing enforcement program.⁶
- 9 of the 92 AAERs concerned stock options backdating,⁷ an issue that is (slowly) working its way out of the enforcement system; those 9 releases exceeded the number of AAERs regarding each of the more current issues of

⁴ AAERs 3195, 3196, 3218, 3243 (attorney), 3245, 3275, 3291, 3292, 3293, and 3309 (attorney).

⁵ AAERs 3198 (Reg FD), 3199 (Reg FD), 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3235, 3236, 3254, 3255, 3261, 3274, 3302, and 3307.

⁶ AAERs 3197, 3213, 3217 (both revenue recognition and options backdating), 3231, 3232, 3234, 3237, 3238, 3241, 3242, 3244, 3246, 3252, 3256, 3257, 3258, 3264, 3265, 3266, 3267, 3278, 3279, 3281, 3282, 3283, 3284, 3285, 3288, 3298, 3299, 3300, 3301, 3306, 3310, and 3311.

⁷ AAERs 3215, 3217 (both revenue recognition and options backdating), 3224, 3253, 3260, 3262, 3263, 3286, and 3287.

loan losses (8 AAERs),⁸ executive compensation (2 AAERs),⁹ and mutual funds and hedge funds (3 AAERs).¹⁰

- 49 of the 92 AAERs announced the institution of proceedings leading to, or the imposition of, bars, suspensions, or censures under Rule 102(e);¹¹ of those, 36 involved corporate officers¹² or miscellaneous accountants,¹³ and 13 involved outside auditors.¹⁴

AAERs in Fiscal 2011 to Date That Involved Outside Auditors

As noted above, through August 15 Fiscal Year 2011 has seen 13 Rule 102(e) proceedings involving outside auditors; in addition, the AAERs reflect one proceeding involving an auditor for a hedge fund that was brought under other provisions of the federal securities laws. Those matters are summarized below.

In the Matter of Altschuler, Melvoin and Glasser LLP, and G. Victor Johnson, II, CPA, AAER No. 3194 (October 4, 2010). The Altschuler firm and engagement partner Johnson were charged with having failed to conduct adequate surprise examinations of

⁸ AAERs 3223, 3225, 3249, 3250, 3277, 3294, and 3295.

⁹ AAERs 3229 and 3233.

¹⁰ AAERs 3194, 3296 and 3239.

¹¹ AAERs 3194, 3208, 3209, 3210, 3211, 3214, 3216, 3217, 3220, 3221, 3222, 3224, 3225, 3227, 3232, 3233, 3238, 3239, 3240, 3241, 3244, 3246, 3248, 3249, 3251, 3257, 3259, 3260, 3262, 3263, 3264, 3265, 3266, 3267, 3269A, 3277, 3278, 3280, 3285, 3286, 3288, 3289, 3290, 3296, 3300, 3305, 3306, 3310, and 3312.

¹² AAERs 3208, 3209, 3210, 3211, 3214, 3216, 3217, 3220, 3222, 3224, 3225, 3233, 3238, 3240, 3241, 3244, 3246, 3249, 3251, 3260, 3262, 3263, 3265, 3277, 3278, 3280, 3285, 3286, 3289, 3296, 3300, 3310, and 3312.

¹³ AAERs 3239 (alleged CPA insider trader), 3259 (corporate control person who allegedly held himself out as a CPA), and 3305 (alleged CPA Ponzi schemer).

¹⁴ AAERs 3194, 3221, 3227, 3232, 3248, 3257, 3264, 3266, 3267, 3269A, 3288, 3290, and 3306.

an investment adviser as required by the SEC's Custody Rule, Rule 206(4)-2 under the Investment Advisers Act, thereby (1) causing the investment adviser who had hired them to violate the Custody Rule and (2) engaging in improper professional conduct under Rule 102(e). The firm settled to a cease and desist order, a censure, and disgorgement of its fees for the examinations; Johnson settled to a cease and desist order and a Rule 102(e) bar.

In the Matter of Moore Stephens Wurth Frazer & Torbet LLP and K. Dean Yamagata, CPA, AAER No. 3221 (December 20, 2010). Yamagata was the engagement partner on Moore Stephens' audits and quarterly reviews of China Energy Savings Technology, Inc. in 2004 and 2005. The Commission charged the firm and Yamagata with failing to conduct the audits and reviews in accordance with PCAOB standards and rules, and with having failed to exercise professional skepticism and due professional care despite having identified the China Energy engagement as involving high risks. Moore Stephens settled the proceeding by agreeing to retain an independent consultant, during whose review Moore Stephens will not accept new issuer audit clients located in China, Hong Kong, or Taiwan; agreeing to a cease and desist order; and agreeing to a censure. Yamagata settled to a cease and desist order and a Rule 102(e) bar with a right to reapply in two years. Moore Stephens and Yamagata also agreed to disgorge, jointly and severally, \$100,000 in audit fees along with prejudgment interest.

SEC v. Michael R. Drogin, CPA, Civil Action No. 11-0063 (RJL) (D.D.C.), AAER No. 3228 (January 11, 2011); *In the Matter of Michael R. Drogin, CPA*, AAER No. 3227 (January 11, 2011). In 2003, the SEC had barred Drogin under Rule 102(e) with the right to apply for reinstatement after two years. Without applying for reinstatement,

Drogin participated in the audits of several SEC registrants, reviewed the filings of those registrants and advised their managements regarding disclosure, and assisted two of the companies in responding to Corp Fin comments on their registration statements. Drogin also issued audit reports for the companies without having completed the audits. Drogin settled the Commission's injunctive action by agreeing to be enjoined from violations of the antifraud and reporting provisions and from further violations of the bar order, as amended, and to pay disgorgement and a civil penalty. Drogin also agreed to the amendment of the 2003 bar order to remove the provision permitting him to apply for reinstatement.

In the Matter of Dohan + Company CPAs, Steven H. Dohan, CPA, Nancy L. Brown, CPA, and Erez Bahar, CA, AAER No. 3232 (January 20, 2011); *In the Matter of Erez Bahar, CA*, AAER No. 3306 (July 26, 2011). Steven Dohan was the concurring partner, Brown the engagement partner, and Bahar a supervisor on Dohan + Company's 2007 audit of International Commercial Television, Inc.'s Form 10-K/SB. They were charged with failing to comply with PCAOB auditing standards. Dohan + Company settled the Commission's Rule 102(e) proceeding by agreeing to the appointment of an independent consultant and agreeing not to accept new engagements for public company audits pending the report of the independent consultant; agreeing permanently to cease all joint audit arrangements in which the firm serves as the principal auditor for SEC registrants (except as required by foreign jurisdictions); and agreeing to a censure. Steven Dohan and Brown each agreed to a Rule 102(e) bar with a right to reapply in three years. Erez Bahar, the supervisor, did not settle the proceeding but instead went to a hearing before an SEC administrative law judge, who ordered a two-year Rule

102(e) suspension against him; on July 26, 2011, the ALJ's order became final after no review of that order was sought.

In the Matter of KPMG Australia, AAER No. 3248 (February 28, 2011). This case involved auditor independence issues. KPMG Australia settled the proceeding by agreeing to appoint an independent compliance consultant to review the firm's procedures with respect to the independence requirements concerning non-audit services to, advocacy on behalf of, and business relationships with, Commission-registered audit clients; agreeing to be censured and to cease and desist from violating Rule 2-02 of Regulation S-X and from causing violations of Section 13(a) of the Exchange Act and Rule 13a-1; and agreeing to disgorge \$1,982,000 and prejudgment interest of \$760,000.

In the Matter of Lovelock & Lewes, Price Waterhouse, Bangalore, Price Waterhouse & Co., Bangalore, Price Waterhouse, Calcutta, and Price Waterhouse and Co., Calcutta, AAER No. 3257 (April 5, 2011). PW Bangalore was the auditor of record for, and the other Price Waterhouse firms were involved in, the 2005-2008 audits of Satyam Computer Services Limited, which subsequently acknowledged that it had falsely reported over \$1 billion in revenue and cash. The Commission charged the respondents with failing to conduct the Satyam audits in accordance with GAAS and PCAOB standards, and with violating Section 10A(a) of the Exchange Act. The respondents settled the proceeding by agreeing to a series of exceptionally detailed undertakings that span 16 single-spaced pages in the Commission's order and include the appointment of an independent monitor and a moratorium on conducting new "SEC Issuer Audits;" agreeing to a cease and desist order against committing further violations of Section

10A(a) and against causing violations of the reporting and books and records provisions; agreeing to pay a civil money penalty of \$6 million; and agreeing to be censured.

In the Matter of Chisholm, Bierwolf, Nilson & Morrill, LLC, AAER No. 3267 (April 8, 2011); *In the Matter of Todd D. Chisholm, CPA*, AAER No. 3266 (April 8, 2011); *In the Matter of Troy F. Nilson, CPA*, AAER No. 3264 (April 8, 2011). Todd Chisholm was the engagement partner and Troy Nilson the successor engagement partner for the audits and quarterly reviews of Powder River Petroleum International Inc. that the Chisholm, Bierwolf firm conducted from 2004 until the first quarter of 2008. The Commission alleged that respondents violated PCAOB standards in those engagements, and also failed to have procedures in place to detect fraud and to evaluate the client's ability to continue as a going concern, leading to violations of the reporting provisions and of Sections 10A(a)(1) and 10A(a)(3) of the Exchange Act, as well as Rule 102(e).

Chisholm, Bierwolf settled by agreeing to cooperate with the Commission's investigation of Powder River; agreeing to cease and desist from committing further violations of Sections 10A(a)(1) and 10A(a)(3) and from causing violations of the reporting provisions; and agreeing – rare for a firm – to be barred from practicing before the Commission as an accountant. Todd Chisholm and Troy Nilson each agreed to the same cooperation provisions and cease and desist orders, and agreed to be barred from practicing before the Commission with the right to reapply in five years.

In the Matter of Kempisty & Company CPAs, P.C., Philip C. Kempisty, CPA and John Anthony Rubino, CPA, AAER No. 3269A (April 8, 2011). This is a contested administrative proceeding in which the SEC has charged that Kentucky Energy, Inc. improperly accounted for warrants and convertible notes that it had issued to third

parties, and that Kempisty & Company wrongfully issued an unqualified audit report on the company's 2005 financial statements and violated PCAOB standards in performing its work. Philip Kempisty was the founding partner and majority shareholder of Kempisty & Co, and Rubino was a partner/member of the firm. The case is scheduled for a hearing before an administrative law judge in early 2012.

In the Matter of Livingston & Haynes, P.C., Kevin F. Howley, CPA and William W. Wood, CPA, AAER No. 3288 (June 6, 2011). The Commission charged violations of Section 10A and improper professional conduct by Livingston & Haynes, by Howley as engagement partner, and by Wood as concurring partner, in connection with the 2005 and 2006 audits and the quarterly reviews of LocatePlus Holdings Corporation, against whom the Commission has filed a separate complaint alleging revenue recognition fraud. The proceeding against the auditors charged them with failing to include procedures to detect illegal acts, with having ignored allegations of illegal acts at LocatePlus and, in the case of the firm and Howley, with having failed to ensure that a risk area marked by "red flags" was properly audited. Livingston & Haynes settled by agreeing not to accept new audit clients until the later of one year from the order or until the firm has certified its accomplishment of various undertakings including an internal review of its policies and procedures; agreeing to cooperate in the SEC's LocatePlus case; agreeing to cease and desist orders against further violations of Section 10A(a)(1) and 10A(b)(1) of the Exchange Act; agreeing to pay a \$130,000 civil money penalty; and agreeing to be censured. Howley and Wood also settled, agreeing to the same cease and desist orders and to be barred from practicing before the Commission with the right to reapply in three years.

In the Matter of Edwin Reese Davis, Jr. CPA, AAER No. 3290 (June 8, 2011). The Commission issued a forthwith order of suspension against Davis based on the fact that his sole CPA license had expired and subsequently had been revoked by the State of Utah for failure to pay fees and for continuing to practice after the expiration of the license. The Commission further alleged that Davis had prepared at least 23 audit reports for Commission registrants after his CPA license had expired.

In the Matter of Joseph F. Sofo, CPA, AAER No. 3301 (July 14, 2011). This matter, while brought against an auditor, involved no charge under Rule 102(e) but instead resulted in charges of causing violations of Sections 17(a)(2) and (3) of the Securities Act and Section 206(4) of the Investment Advisers Act and Rule 206(4)-8 thereunder in connection with the audit of a hedge fund. Sofo was the engagement partner on the 2005 and 2006 audits of Globex Fund conducted by Kurcias, Jaffe & Co., whose only hedge fund client was Globex. The Commission charged that Globex's investment adviser consistently overstated the assets and, therefore, the performance of the Globex Fund. With respect to the 2005 audit, the Commission alleged that Sofo had identified Globex Group as a fraud risk but nevertheless relied on confirmations of the Fund's assets from a party related to the Funds' investment adviser, and did no work to verify those balances, in violation of GAAS. For the 2006 audit, Sofo again identified Globex Group as a fraud risk but relied on confirmations from the accountant for the related party, and also permitted Globex Fund to make false representations in its financial statements regarding the "independence" of that accountant. Sofo settled the case by agreeing to cease and desist from further violations of Sections 17(a)(2)-(3), Section 206(4), and Rule 206(4)-8, and to disgorge \$4,521 along with prejudgment interest.