

# Client Alert

Special Matters and Government Investigations

**APRIL 02, 2024**

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## PCAOB Division of Enforcement's First Quarter Continues Record- Setting Pace

The PCAOB's Division of Enforcement and Investigations' 2024 first quarter activity continued the blistering pace of enforcement since Erica Williams became the Board's Chair. While the Board's first quarter enforcement activity is typically quiet after its annual year-end flurry of settled matters,<sup>1</sup> this year, the Board's first quarter enforcement activity far surpassed any of its recent first quarter output.<sup>2</sup> This quarter, the Board announced twenty settled disciplinary orders, levying nearly \$7 million in civil penalties. If the Board continues at this rate, its enforcement activity will eclipse prior year records for both the total number of enforcement orders and penalties imposed.

The Board's settled orders ran the gamut of substantive topics, including (a) violations of quality control standards related to independence against a large U.S.-based Big 4 firm; (b) audit deficiency matters related to numerous financial statement line items; (c) violations against China-based auditors; (d) quality control violations related to client acceptance of hundreds of special purpose acquisition companies; and (e) failures to make required communications to audit committees.

The Board continues to find fertile enforcement ground through its various sweeps. Several of the Board's first quarter settled orders were from sweeps related to (a) standards for communications with audit committees; (b) audit documentation standards; and (c) reporting requirements.

The Board's enforcement orders also spanned the globe. The Board's first quarter output included orders against auditors or firms based in China, Australia, Mexico, Israel, and India.



### SOME NOTICEABLE ELEMENTS OF THE RECENT ENFORCMENT ACTIVITY

The Board's first quarter enforcement matters continued its recent practice of barring auditors and firms from receiving any type of indemnification, including insurance proceeds, to pay the imposed civil money penalty. In each order imposing a civil money penalty, the Board included a paragraph limiting the respondent from seeking reimbursement for the penalty. On one occasion in the first quarter, however, the Board included an exception to that limiting paragraph, allowing a foreign affiliate of a Big 4 firm to seek reimbursement from "self-insurance provided through a captive insurer owned by Respondent and/or other firms" within the firm's network. In recent years, the Board has made similar exceptions for other foreign affiliates for network firms.<sup>3</sup>

Nearly all of the Board's first quarter settled orders continued a trend of imposing prospective remedial measures in addition to censures, bars/suspensions, and penalties, including requiring, among other things, (a) firms to engage an independent consultant; (b) firms to comply with previously-adopted changes to their quality controls; and (c) firms to provide and individuals to take specific training.

Finally, on two occasions during the first quarter, the Board noted a firm's cooperation in connection with the settlement. In one matter, the Board considered the firm's "extraordinary cooperation" under the Board's 2013 policy statement. The Board noted (a) the firm's substantial assistance in the Board's investigation; (b) remedial measures undertaken voluntarily by the firm; and (c) the firm's voluntary changes to its leadership. In another settlement, the Board noted the firm's cooperation, including by undertaking certain voluntary remedial actions.<sup>4</sup>

### FEDERAL CHALLENGES HAVE NOT LIMITED ENFORCEMENT

The Board's record enforcement pace occurred despite facing two separate federal court challenges to its enforcement program and the Board's structure. In March, an anonymous auditor, represented by the New Civil Liberties Alliance, filed a complaint in the Middle District of Tennessee echoing many of the constitutional and procedural arguments raised in a similar complaint filed last year by an anonymous Colombian auditor in the Northern District of Texas. The judge in the Northern District of Texas case recently granted the Board's motion to dismiss and transferred the case to the District of the District of Columbia, finding, among other things, that the court did not have personal jurisdiction over the Board.

But the federal court matters have not slowed the Board's enforcement push. Indeed, after the first challenge was filed in 2023, the Board's enforcement program had a record year in penalties assessed. And nothing suggests that the recently-filed matter in federal court in Tennessee will slow enforcement activity.

### BOARD LITIGATING MATTER ON APPEAL TO SEC

During the first quarter, the Board continued litigating an appeal against two auditors who filed petitions for review of a December 20, 2023, Board adjudicated disciplinary order.<sup>5</sup> In the public administrative proceedings,<sup>6</sup> the Board filed a motion asking the Commission to lift the stay on sanctions that, by rule, automatically takes effect when a respondent files an application for appeal of a Board final decision. The Board's public motion summarized its opinion barring respondents from associating with a registered public accounting firm because it found one of the respondents violated a prior Board sanction and the other permitted him to do so. The Board's motion argued that the respondents (a) were unlikely to prevail on the merits of their appeal; (b) would not sufferable irreparable injury by lifting the stay; and (c) the stay harmed the public interest. In its motion to lift the stay, the Board argued that one respondent engaged in dishonesty and deceit and the other defied the public trust.



In March, the Commission ordered additional briefing on the Board’s motion to terminate the automatic stay of sanctions, seeking the parties’ positions on “the appropriate legal standard for lifting the stay.” The Commission also set a briefing schedule for the appeal.

### CONCLUSION

As the Board’s enforcement agenda pushes forward on record-breaking pace, it is essential for firms and individuals to have experienced, PCAOB enforcement-specific counsel to help navigate this new, expanding landscape. With the increasing rate of enforcement activity, experienced counsel can help at each stage of a potential matter, including potentially avoiding enforcement inquiries and investigations in the first place, limiting the scope of enforcement matters, and successfully defending at each stage of a formal enforcement matter. Where appropriate, experienced, PCAOB-litigators can challenge the Board’s enforcement action through the adjudication process.

King & Spalding’s partners and experts in its Special Matters & Government Investigations group have many years of valuable experience specifically working on high-priority PCAOB enforcement matters. We will continue to monitor developments with all aspects of PCAOB enforcement and remain ready to assist clients in any potential matter.

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<sup>1</sup> In 2022 and 2023, for example, the Board issued three and one settled orders in the first quarters, respectively, compared to 26 and 20 in the fourth quarters.

<sup>2</sup> In the first quarter of 2017, the Board published more enforcements orders than in the first quarter of this year, but a large number of those orders related to a Form 3 “sweep.”

<sup>3</sup> The Board also continued to show a willingness to consider an individual’s ability to pay when settling matters. In one matter this quarter, the Board, as it has done on occasion in recent years, did not impose a penalty it otherwise would have imposed because of the respondents’ lack of financial resources.

<sup>4</sup> In that matter, the Board did not use the phrase “extraordinary cooperation” or cite to its 2013 policy statement regarding extraordinary cooperation.

<sup>5</sup> See SEC Administrative Proceeding File No. 3-21841.

<sup>6</sup> Under the Sarbanes-Oxley Act of 2002 and PCAOB rules, Board disciplinary proceedings are generally not public. See 15 U.S.C. § 7215(c)(2); PCAOB Rule 5203. However, when a respondent appeals a Board final decision to the Commission, the pleadings in that administrative proceeding are publicly available on the Commission’s website.



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