

As seen in *Law360*: What's Next For Accounting Enforcement After SEC's Big 2024

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The return of the Trump administration, which is expected to include Paul Atkins as Chair of the U.S. Securities and Exchange Commission, will likely have a significant impact on the future landscape of accounting and auditing enforcement. The SEC recently released its annual report detailing the activities and results of its Division of Enforcement for fiscal year 2024, as well as a separate report covering the first quarter of fiscal year 2025.¹ Among other metrics, the reports include a breakdown of the different types of cases the SEC brought during the last five quarters. Although some of the trends from the last year are likely to survive the change in administration, others seem destined to be short-lived.

Listing 60 enforcement actions that involved issuer reporting, accounting, or auditing issues, the SEC's report for fiscal year 2024 demonstrated that these issues occupied a significant portion of its docket—approximately 10% of the SEC's total number of actions during the year. Additionally, the SEC announced in its more recent report on January 17, 2025 that it filed 200 enforcement actions during the first quarter of fiscal year 2025, including actions that covered a range of traditional accounting violations. Looking ahead, certain perennial areas of focus for the Enforcement Division will largely continue to be a focus even with the change in administration as those “bread and butter” cases tend to persist no matter which direction the political winds blow. For example, while there may be broad changes to the Commission's existing enforcement policies and priorities, the SEC will likely continue to focus on pursuing violations committed by gatekeepers, egregious disclosure failures, and conventional GAAP violations, such as fraudulent revenue recognition. Fluctuations are anticipated in other areas, such as ESG, internal controls, and cryptocurrency cases, and when it comes to

¹ See SEC Press Release No. 2024-186, *SEC Announces Enforcement Results for Fiscal Year 2024* (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>; Addendum to Division of Enforcement Press Release, <https://www.sec.gov/files/fy24-enforcement-statistics.pdf>; SEC Press Release No. 2024, *SEC Announces Record Enforcement Actions Brought in First Quarter of Fiscal Year 2025* (Jan. 17, 2025), <https://www.sec.gov/newsroom/press-releases/2025-26>.

the future of auditing enforcement, a key question is what role the Public Company Accounting Oversight Board will play alongside the SEC.

Gatekeeper Focus

During fiscal year 2024, the SEC continued its focus on gatekeepers, which was a consistent theme under the Biden administration. Notably, the SEC demonstrated its willingness to take significant actions against gatekeepers for failing to fulfill their obligations, including by permanently shutting down a large audit firm, pivoting to federal district court to pursue other auditor violations, and bringing charges against an audit committee chair. The SEC's focus on these types of actions is likely to continue under the new administration.

- **BF Borgers**—In May 2024, the SEC charged the audit firm BF Borgers CPA PC and its owner with deliberate and systemic failures to comply with PCAOB auditing standards.² The charges covered conduct related to over 1,500 SEC filings, including “rolling forward” workpapers from previous engagements and passing them off as current audit papers. Announcing the respondents’ agreement to pay a combined \$14 million in civil penalties, Gurbir Grewal, then Director of the SEC’s Division of Enforcement, referred to BF Borgers as a “sham audit mill” that is now “permanently shut down.”³
- **Oyebola**—In September 2024, the SEC charged Olayinka Oyebola and his accounting firm with aiding and abetting securities fraud by ignoring information that revealed one of the firm’s clients had created multiple fake accounting reports bearing Oyebola’s signature and included them in SEC filings as though they were issued by Oyebola’s firm. The SEC alleged that Oyebola and his firm then helped conceal that the audit reports were fake, enabling the client to disclose misleading performance metrics for several years.⁴ In bringing these securities fraud charges against Oyebola and his firm, the SEC strategically navigated around the U.S. Supreme Court’s recent decision in *SEC v. Jarkesy* by filing the charges in federal district court rather than as an administrative proceeding, notwithstanding the fact that the Commission sought a practice bar which it has traditionally pursued administratively. The *Jarkesy* decision, issued by the Supreme Court in June 2024, held that when the SEC seeks

² See SEC Press Release No. 2024-51, *SEC Charges Audit Firm BF Borgers and Its Owner with Massive Fraud Affecting More Than 1,500 SEC Filings* (May 3, 2024), <https://www.sec.gov/newsroom/press-releases/2024-51>.

³ See Debevoise & Plimpton LLP, *SEC Charges Now Suspended Audit Firm BF Borgers with Massive Fraud Affecting More Than 1,500 SEC Filings* (May 6, 2024), <https://www.debevoise.com/insights/publications/2024/05/sec-charges-now-suspended-audit-firm-bf-borgers>.

⁴ See SEC Press Release No. 2024-157, *SEC Charges Olayinka Oyebola and His Accounting Firm with Aiding and Abetting Massive Fraud* (Sept. 30, 2024), <https://www.sec.gov/newsroom/press-releases/2024-157>.

civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial,⁵ effectively limiting the SEC's use of its in-house courts. The decision ultimately led the SEC to drop misconduct charges against at least eight auditors, but the SEC demonstrated in *Oyebola* that it will continue to bring charges against the most egregious offenders in federal court.

- **Kubient**—In September 2024, the SEC filed charges against the former CEO, CFO, and audit committee chair of Kubient, Inc. for the company's overstatement of revenue in connection with two public stock offerings. Kubient's CEO allegedly created false reports that the company had successfully tested a new software program, allowing the company to recognize \$1.3 million in revenue, despite never having actually performed the tests. Kubient's CFO and audit committee chair allegedly learned about the fabrication during a secondary stock offering and then perpetuated the scheme by making false statements about the revenue.⁶ The SEC's decision to specifically charge Kubient's audit committee chair underscores the Commission's commitment to ensuring that board and committee members are held responsible for oversight failures and their roles in connection with fraudulent conduct.

Revenue Recognition

In 2024, the SEC unsurprisingly continued its pursuit of charges related to revenue recognition—perhaps the most prominent area of accounting enforcement. Among other conduct, these cases involved manipulation of key estimates, premature revenue recognition, and knowing overstatements of revenue. The cases also reflected the SEC's continued offering of incentives for self-reporting and cooperation. While the new-look Commission may limit its focus and reduce the number of its sweeps and regulatory compliance actions, more egregious “bread and butter” revenue recognition cases like those highlighted below will likely remain a focus, and the SEC will likely continue to reward self-reporting, cooperation, and remediation measures.

- **Cloopen**—In February 2024, the SEC announced settled fraud charges against Cloopen Group Holding Limited, a China-based provider of cloud communications products. The SEC found that two of the company's senior managers, facing pressure to meet sales targets, directed employees to improperly recognize revenue on service contracts for which Cloopen had not yet completed—or in some cases, even started—its work. According to the SEC, this misconduct, along with other

⁵ *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024).

⁶ See SEC Press Release No. 2024-131, *SEC Charges Former Chairman and CEO of Tech Co. Kubient With Fraud and Lying to Auditors*, (Sept. 16, 2024), <https://www.sec.gov/newsroom/press-releases/2024-131>.

accounting errors, caused Cloopen to overstate its 2021 financial results and revenue guidance. Notably, Cloopen self-reported its accounting errors, cooperated with the SEC's investigation, and undertook prompt remedial measures, all of which contributed to the SEC's decision to not impose civil penalties against the company.⁷

- **Ideanomics**—In August 2024, Ideanomics, Inc. and three of the company's executives settled fraud charges with the SEC for conduct that included the improper recognition of separate revenue streams in 2018 and 2019. The SEC found that in 2018, Ideanomics improperly accounted for its oil trading revenue on a gross rather than net basis, which resulted in the company overstating its reported revenue by \$260 million. Separately, the SEC found that in 2019, Ideanomics overstated revenue in its first and second quarters by \$40.7 million due to its improper accounting of a cryptocurrency transaction for which the company never obtained the crypto keys needed to convert its received tokens to fiat, rendering the tokens of little to no value.⁸
- **Austal**—In August 2024, shipbuilder Austal USA and its parent company, Austal Limited, agreed to settle SEC and DOJ charges that the companies artificially reduced, by millions of dollars, the estimated cost to build certain ships for the U.S. Navy in order to meet their revenue projections. The SEC and DOJ alleged that, as a result of this manipulation of cost estimates, August Limited prematurely and fraudulently recognized revenue and met or exceeded analyst consensus estimates for the company's earnings before interest and tax, a key financial metric used by analysts and investors.⁹

Disclosures and Internal Controls

The SEC's recent enforcement actions also focused on violations related to false or misleading disclosures and deficient internal controls. Under the Biden administration, the Commission showed a particular tendency to pursue internal control violations as a "front-line defense in ensuring the accuracy and reliability of financial statements."¹⁰ The SEC will likely continue to bring similar cases against egregious violators under the

⁷ See SEC Press Release No. 2024-15, *SEC Charges China-Based Tech Company Cloopen Group with Accounting Fraud* (Feb. 6, 2024), <https://www.sec.gov/newsroom/press-releases/2024-15>.

⁸ See SEC Press Release No. 2024-94, *SEC Charges Ideanomics and Three Senior Executives with Accounting and Disclosure Fraud* (Aug. 9, 2024), <https://www.sec.gov/newsroom/press-releases/2024-94>.

⁹ See SEC Press Release No. 2024-108, *SEC Charges U.S. Navy Shipbuilder Austal USA with Accounting Fraud* (Aug. 27, 2024), <https://www.sec.gov/newsroom/press-releases/2024-108>.

¹⁰ See SEC Press Release No. 2024-206, *SEC Charges Utility Company Entergy Corp. with Internal Accounting Controls Violations* (Dec. 20, 2024), <https://www.sec.gov/newsroom/press-releases/2024-206>, (quoting Sanjay Wadhwa, then Acting Director of the SEC's Division of Enforcement).

new administration, and the expanded use of artificial intelligence could lead to even greater scrutiny on disclosures related to AI, which began to draw the attention of the SEC in 2024.¹¹ At the same time, the SEC may begin to shift its focus away from certain disclosure and internal control enforcement actions that involve significant judgment and discretion or are deemed to be “foot faults.”

- **Express**—In December 2024, the SEC settled charges with fashion retailer Express, Inc. for failing to disclose executive compensation the company paid to its former CEO by understating its “all other compensation” disclosures, which identify perks provided beyond traditional forms of payment including salary and bonus, for the CEO by an average of 94% over a three-year period. Notably, the SEC did not impose civil penalties against Express because the company self-reported its disclosure failures and cooperated with the SEC’s investigation.¹²
- **Entergy**—In December 2024, the SEC announced settled charges against Entergy Corporation alleging that during a six-year period the company neglected to develop an internal control to accurately account for surplus materials and supplies in accordance with GAAP. According to the SEC’s complaint, Entergy knowingly recorded materials and supplies as an asset on its balance sheets at their average cost and ignored employees and consultants who identified a substantial portion of the assets as aged materials and supplies that exceeded the company’s future use or minimum stocking levels and therefore should have been expensed in accordance with GAAP.¹³
- **Vince McMahon**—In January 2025, the SEC announced settled charges against the former CEO of World Wrestling Entertainment Inc., Vince McMahon, for failing to disclose that he entered into two settlement agreements on WWE’s behalf that provided a combined \$10.5 million of McMahon’s personal funds to two individuals in exchange for their release of potential claims against McMahon and WWE. The SEC found that McMahon circumvented WWE’s system of internal accounting controls by failing to record the agreements, which caused material misstatements in WWE’s financial statements.¹⁴

¹¹ See, e.g., SEC Press Release No. 2024-36, *SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence* (Mar. 18, 2024), <https://www.sec.gov/newsroom/press-releases/2024-36>.

¹² See SEC Press Release No. 2024-203, *SEC Charges Express, Inc. with Failing to Disclose Nearly \$1 Million in Perks Provided to Former CEO* (Dec. 17, 2024), <https://www.sec.gov/newsroom/press-releases/2024-203>.

¹³ See SEC Press Release No. 2024-206, *SEC Charges Utility Company Entergy Corp. with Internal Accounting Controls Violations* (Dec. 20, 2024), <https://www.sec.gov/newsroom/press-releases/2024-206>.

¹⁴ See SEC Press Release No. 2025-1, *Vince McMahon, Former CEO of WWE, Charged for Failure to Disclose to WWE Two Settlement Agreements He Executed on Behalf of WWE* (Jan. 10, 2025), https://www.sec.gov/newsroom/press-releases/2025-1?utm_medium=email&utm_source=govdelivery.

PCAOB Enforcement

Beneath oversight from the SEC, PCAOB enforcement efforts against auditors have intensified in recent years under Chair Erica Williams, including increasing fines against firms and individuals and the inspection of China-based audits for the first time. In fact, 2024 saw the largest ever PCAOB enforcement action: the imposition of a \$25 million fine against KPMG Netherlands and a bar of its former head of assurance related to exam cheating and the submission of inaccurate representations to the PCAOB staff.¹⁵ The PCAOB has continued to showcase its enforcement efforts in 2025, announcing in January 2025 a settled disciplinary order against Baker Tilly for quality control standard violations.¹⁶

But perhaps just as the audit watchdog has started to become a stronger player in the enforcement space, it could face the prospect of being stripped of power or even entirely dismantled. The PCAOB is already facing constitutional challenges to its disciplinary proceedings based on the Supreme Court's decision in *Jarkesy*, and Paul Atkins, incoming Chair of the SEC, has been a longtime critic of the PCAOB.¹⁷ Whether Atkins completely abolishes the PCAOB, folds it into the SEC, or installs a new PCAOB Chair to replace Williams, there may be a softer enforcement environment ahead for auditors.

2025 Enforcement Landscape

As we settle into a new administration, the SEC will likely continue to focus its enforcement efforts on many of the same accounting and auditing issues that the Commission pursued over the past year, including systemic audit failures, fraudulent revenue recognition, and egregious disclosure violations. Likewise, the Commission will likely continue to reward self-reporting, cooperation, and remediation. However, other areas, such as ESG, internal controls, and cryptocurrency cases may fall out of focus as the agency tailors its approach in response to broader priorities.

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¹⁵ See PCAOB News Release, *PCAOB Imposes Record \$25 Million Fine on KPMG Netherlands and Bars a Firm Leader After Exam Cheating, Misinforming Investigators* (Apr. 10, 2024), <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-imposes-record-25-million-fine-on-kpmg-netherlands-and-bars-a-firm-leader-after-exam-cheating-misinforming-investigators>.

¹⁶ See PCAOB News Release, *Imposing a \$500,000 Fine, PCAOB Sanctions Baker Tilly US, LLP for Quality Control Violations* (Jan. 14, 2025), <https://pcaobus.org/news-events/news-releases/news-release-detail/imposing-a-500-000-fine-pcaob-sanctions-baker-tilly-us-llp-for-quality-control-violations>.

¹⁷ See SEC Press Release No. 2024-204, *SEC Approves 2025 PCAOB Budget and Accounting Support Fee* (Dec. 18, 2024), <https://www.sec.gov/newsroom/press-releases/2024-204>.

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