GIBSON DUNN

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Presidential and SEC Transitions Begin

The new presidential administration could signal significant changes to the regulatory oversight of accounting firms, potentially including policy, leadership, and even structural changes to the Public Company Accounting Oversight Board ("PCAOB"). In 2021, Congressman Bill Huizenga proposed the Streamlining Public Company Accounting Oversight Act, which would have dissolved the PCAOB and moved its functions to the Securities and Exchange Commission ("SEC") Office of the Chief Accountant ("OCA"); a version of the same legislation was included in a larger SEC reform bill in 2024. Although no such bill is currently pending, it is possible that members of Congress could propose and enact a similar bill under the new administration. Indeed, during his first term, President Trump advanced such a restructuring in his proposed 2020 budget, although this proposal was not enacted.

Even if the PCAOB is not restructured, it is possible that the SEC may place new leadership with different regulatory priorities at the helm of the PCAOB. Although Erica Williams was sworn in to a second term as PCAOB Chair in October 2024, the SEC has the power to appoint the members of the PCAOB, who can be removed without cause, and recent administrations have made such changes to PCAOB leadership.

Paul Atkins, the nominee to serve as SEC Chairman, has been critical of the PCAOB in the past as an SEC Commissioner, contending that PCAOB members' salaries are too high and criticizing what he described as overly prescriptive standards.

In the meantime, Commissioner Mark Uyeda was named by President Trump as Acting Chair of the SEC upon Chair Gary Gensler's departure. Uyeda, in turn, named acting heads of divisions and offices to fill certain recent departures, including: (i) Jeffrey Finnell as Acting General Counsel; (ii) Samuel Waldon as Acting Director of Enforcement; and (iii) Ryan Wolfe as Acting Chief Accountant. One of Uyeda's first acts was to name a crypto task force, chaired by Commissioner Hester Peirce, intended to develop a "comprehensive and clear regulatory framework for crypto assets."

Before departing, outgoing Chair Gensler oversaw a flurry of final enforcement activity, which the SEC trumpeted in a press release announcing that the 200 enforcement actions it filed from October through December 2024 represented a quarterly record going back at least to 2000, with another 40 actions filed in January prior to the transition.

PCAOB Adopts Firm Reporting and Firm and Engagement Metrics Requirements

Although, as we reported in our prior Update, the PCAOB shelved the NOCLAR standard that it had proposed in 2023, it conducted one last round of rulemaking after the election. On November 21, 2024, the Board adopted two new proposals that would require registered firms to report a a standard set of firm and engagement metrics, and to report additional information to the PCAOB on Forms 2 and 3. Under the Firm and Engagement Metrics proposal, firms that audit one or more accelerated or large accelerated filing issuers would publicly report certain metrics relating to such audits and their audit practices, including: (1) partner and manager involvement; (2) workload; (3) training hours for audit personnel; (4) experience of audit personnel; (5) industry experience; (6) retention of audit personnel (firm-level only); (7) allocation of audit hours; and (8) restatement history (firm-level only). The firm-level metrics would be reported annually on new Form FM, while engagement-level metrics would be reported on an updated Form AP.

Under the Firm Reporting proposal, new information reported by firms (or, in some cases, a subset of larger firms) on Form 2 and Form 3 would include: (1) financial information; (2) governance information; (3) network relationships; (4) material events; (5) cybersecurity; and (6) updated QC policies and procedures.

On January 14, 2025, SEC OCA, pursuant to delegated authority, extended the deadline for the SEC's consideration of the Firm Reporting and Firm and Engagement Metrics proposals to March 5 and March 11, 2025, respectively. By each of those dates, the Commission (or OCA) must either approve or disapprove each proposal, or institute proceedings to determine whether the proposal should be disapproved. If the Commission and OCA do not act by each date, then the relevant proposal would be deemed to be approved.

The PCAOB on January 16, 2025 separately announced that it had added a project on Subsequent Events and Other Matters Arising After the Date of the Auditor's Report to its mid-term standard-setting agenda.

Corporate Transparency Act Subject to Multiple Legal Battles

The Corporate Transparency Act ("CTA"), which would require non-exempt entities created or registered under state law to provide corporate information to the Financial Crimes Enforcement Network ("FinCEN"), has been subject to an injunction and a separate stay, both emanating from Eastern District of Texas courts. On January 23, 2025, the Supreme Court stayed the injunction that had been imposed in *McHenry v. Texas Top Cop Shop, Inc.*, and that had delayed the effectiveness of the CTA's beneficial ownership interest reporting deadline of January 1, 2025 for non-exempt entities created before 2024. While the Supreme Court appeal was pending, however, a separate Eastern District of Texas court in *Smith v. U.S. Dept. of the Treasury* stayed the reporting requirement on January 7, 2025. Accordingly, the CTA will remain unenforceable until the *Smith* stay is reversed or lifted.

To stay up to date on the latest CTA developments, please consult Gibson Dunn's resource page, which includes relevant client alerts.

PCAOB Adopts Rule To Address Filing and Fee Deficiencies

On January 2, 2025, the SEC approved a new PCAOB rule to permit the Board to address a recurring issue of registered firms' failure to comply with annual requirements to file a Form 2 and pay an annual fee. The rule provides that firms failing to comply with both the form and fee requirement for two consecutive reporting years will be provided with written notice of delinquency and sixty days to contact the PCAOB and confirm their intent to remain registered. Firms that do not respond it sixty days will be withdrawn from registration. This new standard takes effect initially for annual reports and annual fees that are due in the 2025 and 2026 reporting years, meaning that the fall of 2026 is the first period when constructive withdrawals will occur.

One of Three Pending PCAOB Constitutional Challenges Dismissed

On January 7, 2025, the U.S. District Court for the Southern District of Texas dismissed one of the three pending lawsuits alleging structural constitutional defects with the PCAOB. The lawsuit, filed in March 2024 by an anonymous registered firm, sought to challenge a pending Accounting Board Demand issued by the PCAOB's Division of Enforcement and Investigations that it described as excessively burdensome, on the grounds that the PCAOB exercised administrative and investigatory power in violation of multiple constitutional provisions. After the PCAOB ended its investigation of the firm in late December 2024, the parties agreed that the lawsuit should be dismissed as moot.

Two separate lawsuits challenging the constitutionality of the PCAOB remain pending in federal courts in Washington, D.C., and Tennessee.

U.K. Publishes Guidance on New Failure to Prevent Fraud Offense

The U.K. government has released comprehensive guidance on the new corporate criminal offense of "failure to prevent fraud," which will come into effect on September 1, 2025. This offense, introduced by the Economic Crime and Corporate Transparency Act, aims to hold large organizations accountable if they profit from fraudulent activities. Under the guidance, large organizations are those with 250 or more employees, over £36M in turnover, or over £18M in assets.

Organizations subject to the law must demonstrate reasonable fraud prevention measures to avoid liability for employee or associated person fraud:

- Key suggestions include top-level commitment from senior management, regular risk assessments, and customized fraud prevention procedures.
- Due diligence on associated persons, clear communication, training, and robust whistleblowing processes are also recommended.
- Continuous monitoring and review using data analytics and other tools to detect and investigate fraud are essential.

The guidance advocates a comprehensive approach to creating a strong anti-fraud framework within organizations. For more detailed information, please refer to Gibson Dunn's recent client alert.

Other Recent PCAOB Regulatory and Enforcement Developments

- On December 18, 2024, the Securities and Exchange Commission approved the 2025 fiscal year budget for the PCAOB, totaling $399.7 million. The budget was guided by the PCAOB's 2022-2026 Strategic Plan, which is built around four key goals to help the PCAOB fulfill its investor-protection mission: (1) modernize standards, (2) enhance inspections, (3) strengthen enforcement, and (4) improve organizational effectiveness. In a dissenting statement, Commissioner Peirce questioned the PCAOB's effectiveness and costs.

- The PCAOB released a series of staff publications and reports, including on journal entries and audit firm culture, as well as staff guidance relating to new quality control standard QC 1000 and revised standard AS 2901.

- On December 9, 2024, the PCAOB announced its inspection priorities for 2025. This year's inspections will focus on areas that pose a heightened risk to audit quality, and will focus on firms:
  - In sectors with specialized accounting and/or that may be affected by geopolitical and economic volatility,
  - In sectors where inspectors have previously found a higher number of deficiencies, or
  - That may have a heightened going concern risk.

PCAOB Enforcement

- On November 19, 2024, the PCAOB announced settled charges against five audit firms for violations of PCAOB reporting requirements. Three firms failed to file Form APs, either entirely or within the required timeframe, and two firms failed to make required disclosures of disciplinary proceedings through Form 3. The Form AP violations were identified through a PCAOB sweep. The firms agreed to pay civil penalties ranging from $25,000 to $50,000.

- On November 8, 2024, the PCAOB revoked the registration of a Chinese firm for repeated violations of PCAOB rules and for failing to cooperate with an investigation opened into those violations—including refusing to respond to formal demands for documents and information. The PCAOB's order notes that the PCAOB would have imposed a $50,000 penalty based on the conduct, but that the Board accepted the firm's offer of a settlement with no penalty due to the firm's financial resources

Practice Group Chairs

James J. Farrell
New York
+1 212.351.5326
jfarrell@gibsondunn.com

Monica K. Loseman
Denver
+1 303.298.5784
mloseman@gibsondunn.com

Michael Scanlon
Washington, D.C.
+1 202.887.3668
mscanlon@gibsondunn.com

In addition to the Accounting Firm Advisory and Defense Practice Group Chairs listed above, this Update was prepared by David Ware, Timothy Zimmerman, Monica Limeng Woolley, Bryan Clegg, Douglas Colby, Hayden McGovern, John Harrison, Nicholas Whetstone, and Ty Shockley.

For further information about any of the topics discussed herein, please contact one of the Accounting Firm Advisory and Defense Practice Group Chairs or the Gibson Dunn attorney with whom you regularly work.