



One Firm Worldwide<sup>SM</sup>



## WHITE PAPER

July 2016

### Financial Reporting: 2016 Mid-Year Update

At the midpoint of 2016, the regulatory and enforcement environment remains particularly active with regard to financial reporting and disclosure. Cases brought by the Securities and Exchange Commission have targeted accounting fraud, disclosure infractions, and internal controls violations, with individuals facing charges in most of these instances. This *White Paper* presents an overview of recent significant cases and developments, and offers suggestions to companies trying to successfully navigate the current enforcement environment.

## TABLE OF CONTENTS

Enforcement Remains Active .....	1
Non-GAAP Measures Under Scrutiny .....	3
Disclosure Reform Possible.....	4
Internal Controls in Focus .....	5
Corporate Compliance Encouraged.....	5
Individuals Remain at Risk.....	5
PCAOB Pushes Disclosures.....	6
Suggestions.....	6
Lawyer Contacts.....	7
Endnotes .....	7

We are pleased to offer our clients and friends this mid-year update on financial reporting and issuer disclosure enforcement activity in 2016. The level of attention regulators are paying to financial reporting and disclosure remains quite high. That has meant not just a large number of enforcement actions but also a very public and concerted effort by the policy divisions within the SEC to influence corporate behavior in specific reporting areas.

The cases include garden-variety accounting fraud matters, disclosure cases, and internal controls violations. And individuals were charged in most of these cases. The non-enforcement effort to shape behavior includes an all-hands-on-deck focus on non-GAAP (generally accepted accounting principles) measures, proposals to significantly alter Regulation S-K disclosures, and new PCAOB proposals and requirements for audit reports and the reporting on audit partners. Against this backdrop, the whistleblower program continues to turn out significant awards, showing no signs of slowing down, and presenting additional compliance risk to companies trying to do the right thing.<sup>1</sup> In short, the regulatory environment continues to be especially active when it comes to financial reporting and disclosures.

## ENFORCEMENT REMAINS ACTIVE

The SEC continues to focus on financial reporting and disclosure enforcement, filing and settling large and small cases against both individuals and companies. Below are highlights from the more notable cases filed or settled so far in 2016.

**Internal Controls.** The SEC has already announced a number of noteworthy internal controls cases this year. These cases give warning especially to growing companies, which often have understaffed and overwhelmed accounting departments in a distressed environment or one subject to rapid growth.

- The SEC settled charges against an oil and gas exploration and production company, its former CFO, and former chief accounting officer, as well as a former audit engagement partner and former company consultant, relating to their alleged failure to properly evaluate and apply applicable internal controls over financial reporting standards, leading to the improper conclusion that the company did not have any material weaknesses in its internal controls.<sup>2</sup>

The company and individuals reached this conclusion despite the strain placed on the company's understaffed accounting department by rapid growth and acquisitions.

- The SEC settled allegations of violations of the internal control provisions of the Exchange Act against a financial services firm that provides execution and advisory services in commodities after the firm restated some of its financial statements due to errors in the firm's manual asset-reconciliation process.<sup>3</sup> The restatements were made after the firm's independent auditor flagged an item in the reconciliation process, and the firm's ensuing investigation concluded that there were material weaknesses in its internal controls, including a failure to implement controls sufficient to ensure the accounting department was notified when a trading account was reclassified and to timely detect errors in the reconciliation between the general ledger and trading system data and the review thereof.
- The SEC settled with a lithium-ion battery manufacturer, its former CEO, former CFO, and former chief accounting officer over allegations that the former executives failed to ensure the company had proper internal controls.<sup>4</sup> The SEC alleged that the company did not have a procedure to ensure the proper dissemination of information to its accounting personnel, failed to employ enough accounting personnel with the requisite knowledge of and experience and training in the application of GAAP, and failed to have documented procedures relating to impairment analysis.

**Disclosures.** Disclosure cases continue to account for a number of the SEC's enforcement actions in 2016. Some of the cases focus on a company's statements relating to the readiness of a new product, including the likelihood that a product will receive the regulatory certification needed before the company can sell the product, while others continue to emphasize the proper disclosure and approval of related-party transactions.

- The SEC settled allegations against a financial services company relating to the company's false disclosure that it had policies, procedures, and practices in place that required the company's then-executive chairman to recuse himself from approving transactions with related entities.<sup>5</sup> Despite the company's claims, the company lacked such a written policy, and instead, the executive chairman

recused himself only on an ad hoc basis from some of the discussions relating to the approval of related party transactions and participated in others.

- The SEC settled charges against a developer of touch screen technologies and its former chairman of the board, and charged the company's former CEO and former CFO, alleging that the company misled investors about the readiness of a sensor it was developing.<sup>6</sup> The company represented that it was ready to begin mass production of this new, key product and had received purchase orders for a "commercial run" of the product, when in fact, the company was not yet capable of mass producing the product and had received a purchase order for only \$10 worth of samples.
- The SEC settled charges against a pharmaceutical company, and charged the company's former CEO, former CFO, and former chief medical officer, alleging that the company misled investors about the FDA's review of the company's application for approval of its main developmental drug.<sup>7</sup> The SEC alleged that the company and officers phrased statements in a manner intended to downplay the FDA's level of concern regarding the drug and failed to disclose that the FDA had recommended the company perform a second clinical trial to address the FDA's concern about the patient survival rate from the first trial.
- The SEC settled charges against a manufacturer of medium- and heavy-duty trucks and diesel engines, and charged the manufacturer's former CEO, alleging that the company misled investors about the development of an exhaust-gas-recirculation diesel engine.<sup>8</sup> The SEC alleged that in 2011, the company applied for EPA certification of the engine before it was ready for production, and stated in its 2011 annual SEC filing that it expected the EPA to certify the engine despite the fact that the EPA had informed the company four days earlier that the engine did not meet requirements. Additionally, in a 2012 quarterly filing, the company stated it was unaware of any EPA concerns about the engine even though the EPA had raised several serious concerns about it.
- The SEC charged a petroleum storage and sales company and its CFO with fraud and accounting violations, alleging that the company made false public statements about the

capacity of its storage depots and engaged in a fraudulent scheme to induce investors to exercise warrants to purchase stock when the company was short on cash.<sup>9</sup> The SEC alleged that the company ignored evidence from its own records, auditors, and consultants, as well as third-party research, when touting the capacity and activity of its storage depots. In addition, as part of the fraudulent scheme, the CFO allegedly reported his own purchases of company stock to create a false impression about the company's prospects.

**Accounting.** Inaccurate representations made by company employees to external auditors about accounting treatments have continued to be the source of enforcement actions in 2016. In other cases, the SEC has honed in on companies that have recognized revenue for certain transactions despite their own stated policies that such revenue recognition was improper.

- The SEC alleged that a medical device manufacturing company falsely recognized revenue on two "bill and hold" transactions in its 10-K, falsely inflating the company's revenue by \$366,000, or 47 percent.<sup>10</sup> The SEC alleged that the circumstances of the two transactions did not meet the revenue recognition guidelines published in the same 10-K. In the first instance, the sale was not final, there was no fixed commitment to purchase the goods, and the buyer had not obtained regulatory approval to resell the medical devices. In the second instance, the buyer had not agreed to purchase a specific quantity of goods within a certain time, and the company had not completed all finishing activities for the goods as required by the agreement.
- The SEC settled charges against a major agricultural seed and chemical company and three of its employees with accounting responsibilities.<sup>11</sup> The SEC alleged the company improperly accounted for rebate offers and payments made to U.S. and international resellers and customers of its main herbicide product as selling, general, and administrative expenses rather than as rebates, which enabled the company to meet consensus earnings-per-share estimates for 2009 and resulted in the company materially misstating its consolidated earnings in 2009 through 2011. The SEC further alleged the company lacked sufficient internal accounting controls relating to the identification of and accounting for rebate payments.

- The SEC filed charges against a biological-based pest management and plant health product manufacturer and its former COO and settled charges against its former CFO and customer relations manager after the company restated its financial statements for all of 2013 and the first two quarters of 2014.<sup>12</sup> The SEC alleged that the COO directed employees to offer reseller customers concessions on the normal purchase terms but to conceal those concessions from the rest of the company, which enabled the company to meet sales and revenue expectations but caused it to file materially false financial statements reflecting the improper and premature recognition of \$4 million in revenue, half of which was never actually realized.
- The SEC settled charges against a supply chain and logistics company, its former CEO, and two former CFOs, after the company restated five years of financial statements in January 2013.<sup>13</sup> The company, which agreed to pay a \$1.6 million penalty, allegedly inflated its income by retaining rebate payments from third-party vendors that it was contractually obligated to pass on to its customers and by passing down inflated third-party vendor costs to its customers in contravention of contractual agreements.
- The SEC filed charges against the former COO and former controller of a personal computer and tablet accessories company and settled charges against the company, its former vice president of finance and corporate controller, and its former director of accounting and financial reporting.<sup>14</sup> The SEC alleged that the company improperly recognized revenue from the sale of goods to distributors in 2008 and 2009, which resulted in the company overstating its operating income by \$16.2 million in 2009; misled its auditors about a failed product; failed to properly write down that product in 2011, which resulted in the company overstating its operating income by \$30.7 million, or 27 percent, in 2011; and failed to properly account for its warranty liabilities in 2012 and 2013.
- The SEC settled charges against a major retailer of sporting goods and outdoor recreation merchandise and its CFO, alleging that the company failed to eliminate intra-entity transactions when preparing its consolidated financial statements in violation of GAAP and the company's accounting representations.<sup>15</sup> The company failed to eliminate a promotions fee it received from its wholly owned bank subsidiary, resulting in an understatement of the company's merchandise costs and a resulting overstatement of merchandise gross margin percentage, a key metric the company used to tout its profitability in its earnings releases and analysts calls.
- The SEC settled charges against a sanitation company after the company restated its financial statements for the first three quarters of 2011 in 2013.<sup>16</sup> The SEC alleged that the company improperly accounted for a prepayment penalty it incurred in paying off debt of a company it acquired as goodwill instead of as an expense; improperly adjusted for salary expenses of employees of acquired companies who were terminated post-acquisition by increasing the amount of reported goodwill for the acquisition; improperly recognized a contract as unfavorable, permitting it to recognize a liability and amortize it over the life of the contract; and improperly manipulated insurance reserves, manipulated allowances for doubtful accounts in contravention of the company's accounting representations, and otherwise improperly manipulated various accounting entries in order to meet EBITDA targets.

## NON-GAAP MEASURES UNDER SCRUTINY

In what can only be described as an about-face for the agency, SEC senior officials have shown a drastically increased focus on companies' use of non-GAAP measures. In addition to multiple public speeches from senior officers and commissioners, the agency recently revised Compliance and Disclosure Interpretations ("CDI") on the use of non-GAAP financial measures.<sup>17</sup> The revised CDI provides examples of practices companies should avoid:

- Presenting a full income statement of non-GAAP financial measures;
- Presenting a non-GAAP financial measure using a style of presentation (e.g., bold, larger font) that emphasizes the non-GAAP financial measure over the comparable GAAP financial measure; or
- Presenting a non-GAAP financial measure preceding the most directly comparable GAAP financial measure (including in an earnings release headline or caption).<sup>18</sup>

Beyond the revised CDI, a number of SEC senior officials have signaled the Commission's focus on the use of non-GAAP measures. The SEC chair recently recognized that "investors want non-GAAP information" but noted that she has "significant concerns about companies taking this flexibility too far and beyond what is intended and allowed by our rules."<sup>19</sup> The Office of Chief Accountant's deputy chief accountant and the chief accountant of the Division of Corporation Finance have recently and repeatedly "reiterate[d] and add[ed]" to "concerns about non-GAAP measurers" from others in the commission.<sup>20</sup> They have highlighted three areas of particular concern to the division: (i) companies substituting their own "tailored" accounting rules for a GAAP method; (ii) earnings per share measures that resemble liquidity measures; and (iii) non-GAAP measurements of tax expense.

Whether the SEC's increased focus on non-GAAP measures will result in increased enforcement actions remains to be seen, but the SEC "hope[s] companies will seize this opportunity to review their practices and make any necessary changes."<sup>21</sup> This is yet another controls and audit committee issue, as the SEC chair urged "that appropriate controls be considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures."

## DISCLOSURE REFORM POSSIBLE

Another priority for the SEC is disclosure reform. As noted by SEC Commissioner Kara Stein's recent call for an ambitious overhaul of the disclosure regime: "We need to broaden our vision and reach for a higher goal. Let us reimagine disclosure and how information can be exchanged between companies and investors.... It's an ambitious goal, and we should be ambitious."<sup>22</sup> Ms. Stein noted that companies and investors are "demanding a new way of communicating. Investors want better information. Companies want fewer burdens. We can do both because the technology to do both has arrived."<sup>23</sup> Much of this rhetoric is lofty and aspirational, but it presents an opportunity for companies to influence the future of disclosures.

This opportunity comes most plainly through the SEC's disclosure effectiveness initiative, which is in full swing, as evidenced by the 341-page concept release issued in April 2016 that seeks public comment on modernizing disclosure requirements in Regulation S-K.<sup>24</sup> The SEC chair prioritized

this initiative when she took office in 2013. At the time, she expressed concern that investors were overloaded with information and it was difficult to identify the most relevant information in reports. The concept release seeks comment on the overall disclosure framework, existing and potential disclosure requirements, and the presentation and delivery of disclosures. The Commission's concept release also requests public comment about the sustainability metrics that are important to investment decisions and information about why companies often choose to provide sustainability information outside of their public filings. The Commission's disclosure effectiveness initiative has focused on the intersection between materiality and sustainability disclosures, in part because of the efforts of a number of socially responsible investor groups. Companies have until July 15 to comment on the concept release. However, it is also important to note that the initiative has caused significant political pushback, especially from Senator Elizabeth Warren, who has criticized the initiative and urged the SEC to implement "mandatory [disclosure] rules that will strengthen investor protection and financial markets."<sup>25</sup>

The SEC also is redesigning EDGAR as part of a "multi-year initiative to develop the next generation electronic disclosure system."<sup>26</sup> Commissioner Stein noted that the EDGAR redesign is intended to not only "catch up to the new digital world" of "nearly instantaneous access to a variety of digital information" from our pockets, but to also be part of a larger, more holistic effort: the disclosure effectiveness initiative.<sup>27</sup>

The SEC also recently adopted rules that require "resource extraction issuers to disclose payments made to governments for the commercial development of oil, natural gas or minerals."<sup>28</sup> The rules cover all payments or series of payments exceeding \$100,000, including "taxes; royalties; fees (including license fees); production entitlements; bonuses; dividends; payments for infrastructure improvements; and, if required by law or contract, community and social responsibility payments."<sup>29</sup>

One other disclosure item is worth mentioning. As we noted in our Annual Update, the Financial Accounting Standards Board ("FASB") issued two proposals in 2015 aimed at clarifying how the concept of materiality applies to the notes to financial statements. FASB staff is currently analyzing stakeholders' feedback, much of which has been negative, with many commenters believing the proposal has created more confusion than it resolves.<sup>30</sup>

## INTERNAL CONTROLS IN FOCUS

Recent cases demonstrate that internal controls over financial reporting (“ICFR”) are atop the SEC’s enforcement agenda. It is important, therefore, that companies take stock of lessons learned from enforcement actions. OCA’s deputy chief accountant recently identified a few such lessons from a recent enforcement action against an oil and gas exploration and production company and several individuals, including company management, the company’s auditors, and a company consultant relating to deficient evaluation of the company’s ICFR:

- Management should have responsibility to carefully evaluate the severity of identified control deficiencies and to report, on a timely basis, all identified material weaknesses in ICFR. Any required disclosure should allow investors to understand the cause of the control deficiency and to assess the potential impact of each for disclosure as a material weakness.
- Companies should maintain competent and adequate accounting staff resources to keep books, records, and accounts that accurately reflect the company’s transactions and to maintain internal accounting controls designed to ensure that company transactions are recorded in accordance with management’s authorization and in conformity with GAAP.
- Companies should continually be reevaluating their internal accounting controls to ensure that they are adequately adjusted for the significant changes to GAAP to be implemented over the next few years.
- Management has to take responsibility for its assessment of ICFR. That responsibility cannot be outsourced to third-party consultants. At the same time, third-party consultants have obligations to uphold when assisting management in its evaluation of ICFR.<sup>31</sup>

Other lessons learned from recent ICFR enforcement actions include:

- Companies, particularly large, multinational ones, should have processes in place to ensure that their accounting departments receive all of the information they need to keep complete and accurate accounting records.
- Companies should memorialize their specific accounting procedures in writing to ensure that the proper processes are followed when preparing financial statements.

The importance of controls over financial reporting may also take on more prominence as major changes in GAAP are implemented over the coming years.<sup>32</sup>

## CORPORATE COMPLIANCE ENCOURAGED

Two items are worth mention on compliance-specific developments. First, the SEC chair’s chief of staff recently stressed the importance of a corporate culture that emphasizes integrity, personal responsibility, and rewarding ethical behavior.<sup>33</sup> He suggested that policies and protocols should be simple and intuitive for everyone in the organization. He also commented on the shift toward technological reliance in corporate compliance but noted the limitations of technology in achieving compliance. While primarily addressed to the broker-dealer and investment adviser community, the potential for overreliance on technology solutions to compliance problems applies equally well to public companies.

Second, the Ethics and Compliance Initiative finalized its Principles & Practices of High-Quality Ethics & Compliance Programs.<sup>34</sup> The report is structured around five principles shared by effective ethics and compliance programs. These principles are: (i) incorporation of ethics and compliance into business strategy; (ii) ownership of ethics and compliance risks; (iii) involvement of leadership at all levels; (iv) culture of encouraging reports of concerns and suspected wrongdoing; and (v) accountability when wrongdoing occurs. For anyone interested in improving compliance programs, this report is well worth reading.

## INDIVIDUALS REMAIN AT RISK

Individual liability continues to be a focus of the SEC’s investigative strategy. Following the Yates memo issued by the Department of Justice last year, companies have taken notice and are proactively organizing Yates “binders”—compilations of emails, documents, and other evidence pertaining to individuals—to provide to the government during its investigations. According to the Enforcement Division Director, the Commission expects to name more individuals in upcoming enforcement actions as well.<sup>35</sup> He noted that the SEC is pressing companies to decrease compensation for executives implicated in financial reporting cases, even if these individuals have not been

charged. He also reemphasized the SEC's focus on financial reporting and audit cases, citing a case against an oil and gas exploration and production company and several individuals associated with the company, where a company and related individuals were fined for deficient internal controls, even though there was no public misstatement or accusation of fraud.

The numbers certainly back up these claims, as individuals were named in almost every one of the cases summarized above. Indeed, the SEC brought charges against at least one, but often multiple, individuals in about 80 percent of the cases discussed in this *White Paper*, in addition to the company implicated in the underlying action.

### PCAOB PUSHES DISCLOSURES

The PCAOB is considering key changes to its standards for audit reports. In an effort to increase transparency, the SEC has already ratified the PCAOB rule requiring audit firms to fill out a new Form AP with information about the engagement partner's identity and other participating firms when completing a public company audit.<sup>36</sup> The latest PCAOB proposal, which follows comments to a similar 2013 proposal, suggests new form and content requirements for an auditor's financial statements report, specifically as it relates to "critical audit matters" ("CAMs").<sup>37</sup> Under the proposed standard, the auditor must, among other things, disclose the CAM, the steps taken to address the matter, and the financial disclosures relating to the CAM. The proposal also seeks a required disclosure of the auditor's tenure, independence, and affirmation that reasonable efforts were taken to ensure that the statements were free of material misstatements. Comments on the proposal are due by August 15, 2016.

### SUGGESTIONS

A few suggestions for how to respond to the aggressive enforcement environment surrounding financial reporting and disclosures include:

- Integrate internal controls over financial reporting practices and the company's overall compliance program to ensure consistent procedures, monitoring, remediation, and continuous improvement across these functions. This requires ongoing communication between personnel directly responsible for those functions as well as senior management and the board.
- Draw lessons from the recent cases reflecting how internal controls can fail and share those lessons with your disclosure and reporting personnel. Most people reading this *White Paper* will be lawyers, but the lessons are often just as important for the accounting and financial personnel.
- Ensure that your disclosure controls and procedures surrounding non-GAAP measures are robust and being followed. Everyone recognizes that non-GAAP measures are filling an important gap in financial reporting, but the SEC is clearly focused on this area, and that often signals that enforcement is on the lookout for a message case.
- Keep the board and the audit committee informed of new developments in corporate disclosure and financial reporting by providing regular updates. This update should include at least some discussion of the kinds of cases the SEC is filing, to ensure directors are aware of the kinds of things that can go wrong.
- Align your executive compensation system with a strong control environment. Are your executives incentivized to maintain quality controls, and are there consequences for failures to do so?



## LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

### David Woodcock

Dallas

+1.214.969.3681

[dwoodcock@jonesday.com](mailto:dwoodcock@jonesday.com)

### Shawn Cleveland

Dallas

+1.214.969.3732

[scleveland@jonesday.com](mailto:scleveland@jonesday.com)

### Henry Klehm III

New York

+1.212.326.3706

[hklehm@jonesday.com](mailto:hklehm@jonesday.com)

### Joan E. McKown

Washington

+1.202.879.3647

[jemckown@jonesday.com](mailto:jemckown@jonesday.com)

### Laura Jane Durfee

Dallas

+1.214.969.5150

[ldurfee@jonesday.com](mailto:ldurfee@jonesday.com)

*Steven G. Gersten and Anand Varadarajan, associates in the Dallas Office, assisted in the preparation of this White Paper.*

## ENDNOTES

- 1 “SEC Issues \$17 Million Whistleblower Award” (June 6, 2016) (“The SEC’s whistleblower program has now awarded more than \$85 million to 32 whistleblowers since the program’s inception in 2011.”).
- 2 Exchange Act Release No. 77,342 (Mar. 10, 2016); Exchange Act Release No. 77,343 (Mar. 10, 2016); Exchange Act Release No. 77,344 (Mar. 10, 2016); Exchange Act Release No. 77,345 (Mar. 10, 2016); Exchange Act Release No. 77,346 (Mar. 10, 2016).
- 3 Exchange Act Release No. 77,596 (Apr. 12, 2016).
- 4 Exchange Act Release No. 77,645 (Apr. 19, 2016); Exchange Act Release No. 77,646 (Apr. 19, 2016).
- 5 Exchange Act Release No. 76,938 (Jan. 20, 2016).
- 6 Litigation Release No. 23,484 (Mar. 10, 2016).
- 7 Litigation Release No. 23,503 (Mar. 29, 2016).
- 8 Litigation Release No. 23,507 (Mar. 31, 2016).
- 9 Litigation Release No. 23,584 (June 27, 2016).
- 10 Exchange Act Release No. 77,073 (Feb. 5, 2016). The SEC also charged the engagement partner of the company’s independent auditor with improper professional conduct for failing to recognize that the company’s inadequate accounting staff and related party transactions, among other things, made the company a high-risk client.
- 11 Exchange Act Release No. 77,087 (Feb. 9, 2016).
- 12 Exchange Act Release No. 77,161 (Feb. 17, 2016); Exchange Act Release No. 77,162 (Feb. 17, 2016).
- 13 Exchange Act Release No. 77,372 (Mar. 15, 2016).
- 14 Exchange Act Release No. 77,644 (Apr. 19, 2016).
- 15 Exchange Act Release No. 77,717 (Apr. 26, 2016).
- 16 Exchange Act Release No. 77,887 (May 24, 2016).
- 17 Jones Day *Commentary*, “The Tide Has Turned: The SEC’s Renewed Focus on Non-GAAP Financial Measures” (May 2016).
- 18 *Id.*
- 19 Mary Jo White, Chair of the Commission, “Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability” (Jun 27, 2016).
- 20 Wesley R. Bricker, Deputy Chief Accountant, “Remarks Before the 2016 Baruch College Financial Reporting Conference” (May 5, 2016).
- 21 *Id.*
- 22 Kara M. Stein, Commissioner, “Disclosure in the Digital Age: Time for a New Revolution” (May 6, 2016).
- 23 *Id.*

- 24 [“SEC Solicits Public Comment on Business and Financial Disclosure Requirements in Regulation S-K”](#) (Apr. 15, 2016). The Commission more recently sought comments on other rule amendments “designed to further inform the Commission’s actions to enhance disclosure.” See [“SEC Proposes Amendments to Update and Simplify Disclosure Requirements As Part of Overall Disclosure Effectiveness Review”](#) (July 7, 2016) (proposing “amendments to update and simplify certain disclosure requirements by eliminating redundant, overlapping, outdated and superseded requirements due to changes in disclosure rules, accounting principles, and technology”).
- 25 [Letter from Elizabeth Warren](#), Senator, Massachusetts, to Mary Jo White, Chair, Securities and Exchange Commission (July 7, 2016).
- 26 Stein, *supra* note 22.
- 27 *Id.*
- 28 [“SEC Adopts Rules for Resource Extraction Issuers Under Dodd-Frank Act”](#) (June 27, 2016). For more information, see the [Jones Day Commentary](#) on the new requirements.
- 29 *Id.*
- 30 Gretchen Morgensen, [“FASB Proposes to Curb What Companies Must Disclose”](#) (Jan. 2, 2016).
- 31 Wesley Bricker, Deputy Chief Accountant, [“Remarks Before the 35th Annual SEC and Financial Reporting Institute Conference”](#) (June 9, 2016).
- 32 *Id.*
- 33 See Andrew Donahue, Chief of Staff, SEC [“New Directions in Corporate Compliance: Keynote Luncheon Speech”](#) (May 20, 2016).
- 34 Ethics & Compliance Initiative, [“Principles & Practices of High-Quality Ethics & Compliance Programs”](#) (2016).
- 35 Andrew Ceresney, Enforcement Director, SEC, Panel Presentation at the Practising Law Institute (Apr. 29, 2016).
- 36 PCAOB, [“PCAOB Rules to Improve Transparency by Disclosing Engagement Partner Name and Information about Other Audit Firms are Approved by SEC”](#) (May 10, 2016).
- 37 Public Company Accounting Oversight Board, Release No. 2016-003, [“Proposed Auditing Standard—The Auditor’s Report on an Audit of Financial Statements when the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards”](#) (May 11, 2016). The latest proposal defines a CAM as “any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (i) relates to accounts or disclosures that are material to the financial statements and (ii) involved especially challenging, subjective, or complex auditor judgment.”

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our “Contact Us” form, which can be found on our website at [www.jonesday.com](http://www.jonesday.com). The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.