



## SEC Dismisses In-House Proceedings Against Accountants Following *Jarkesy*

Posted by David Peavler and Evan Singer, Jones Day, on Monday, September 16, 2024

**Editor's note:** David Peavler and Evan Singer are Partners at Jones Day. This post is based on a Jones Day memorandum by Mr. Peavler, Mr. Singer, and Alexis Désiré.

***In the wake of the U.S. Supreme Court's recent *Jarkesy* decision, the U.S. Securities and Exchange Commission ("SEC") dismissed two contested Rule 102(e) proceedings against accountants, suggesting that the agency believes these proceedings to be unconstitutional.***

The Supreme Court recently held in *SEC v. Jarkesy* that the SEC's in-house administrative proceedings violate the Seventh Amendment's right to jury trial to the extent they adjudicate claims that are "legal in nature," such as fraud charges and civil penalties. *Jarkesy* did not directly address, however, other kinds of enforcement actions the SEC historically adjudicates in-house, including proceedings under Rule 102(e) of the SEC Rules of Practice, which is the SEC's primary tool for regulating the professionals appearing before it. Among other things, Rule 102(e) empowers the SEC to censure or bar professionals found to have engaged in "improper professional conduct," which, for accountants, can include repeated violations of applicable professional standards. But Rule 102(e) proceedings can only be brought administratively.

The SEC seems now to believe that *Jarkesy* precludes litigating Rule 102(e) proceedings administratively. In August 2024, the SEC dismissed two contested Rule 102(e) proceedings against accountants who allegedly failed to conduct audits in accordance with professional standards. The SEC previously had moved to stay each case pending a decision in *Jarkesy*. Notably, while one of the cases involved a claim for civil penalties—thus plainly implicating *Jarkesy*—the other sought only remedial and cease-and-desist relief. It may also be significant that each accountant had sued the SEC in federal court to challenge its use of administrative proceedings.

The SEC has yet to announce a policy against litigating contested Rule 102(e) proceedings administratively—and the agency's barebones motions to dismiss the two cases provide no greater clarity—but such a policy could have significant ramifications. Rule 102(e) is one of the SEC's most potent weapons, since an SEC censure or bar can cripple a professional career, and the SEC has leveraged the threat of litigating before its in-house courts to secure significant settlements against all types of professionals. But if that threat no longer exists, then parties may be less inclined to accept the agency's settlement terms, and the SEC may choose to pursue only the most serious

cases in federal district court. In either case, the SEC's ability to regulate the professionals who appear before will likely be substantially diminished.

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