



[*Editor's Note:* This past Friday, Perkins Coie Partner Lou Mejia, former SEC Chief Litigation Counsel, joined the chair of the SEC Enforcement Division's Financial Reporting and Audit Group on a panel to discuss the agency's latest enforcement efforts surrounding financial reporting fraud].

Margaret McGuire, the chair of the SEC Enforcement Division's Financial Reporting and Audit Group (formerly a "[Task Force](#)"), participated in a panel at the [American Law Institute's Accountants' Liability 2015 Conference](#) in Washington, D.C. on October 2, 2015, during which she outlined the Group's latest enforcement initiatives. The Financial Reporting and Audit Group was formed in 2013 with the stated goal to strengthen the agency's efforts to identify and prosecute securities law violations related to financial reporting and audit failures. From 2013 to 2014 alone, the percentage of audit firm clients sued by the SEC more than tripled (**4% to 14%**). McGuire touched on 6 important takeaways relating to the Financial Reporting and Audit Group's priorities:

1. The Group has increased in size by adding 35 attorneys and accountants as "liaisons."
2. The SEC is undertaking an **Issuer Monitoring** initiative by which it uses a methodology to review the data of certain issuers and has identified 250 issuers that are of interest to the SEC. In some cases, audit firms for these issuers are also under review.
3. The SEC is also pursuing an **Operation Broken Gate** initiative by which it provides tighter oversight of the individuals it considers to be the "gatekeepers" for protecting investors by helping ensure fair financial presentation and disclosure by public companies.
4. The SEC's data analytics tools have evolved into the **Corporate Issuer Risk Assessment program** (CIRA) which now allows the SEC to access over a hundred custom metrics from one dashboard. CIRA allows users to review combined data from financial statements, corporate reports, auditors, third-party databases, market data, and XPRL data.
5. **Internal Control over Financial Reporting** (ICFR) continues to be a focus of the SEC. McGuire said the SEC looks for signs that an issuer's control environment may be weak, such as repeatedly missing filing deadlines or multiple revisions of financial statements in a short period of time.
6. McGuire's Group continues to rely on tips from whistleblowers, which have served as a rich source of leads for SEC Enforcement.

While [criticism has been leveled](#) at the SEC's announced goal of bringing more cases as administrative proceedings before its own judges, the majority of the SEC's recent cases relating to financial fraud have been brought in federal district court. In addition, the SEC does *not* appear to be pursuing cases in which it is challenging professional judgment on accounting issues, where there is often more than one correct approach. If the SEC's allegations in recent litigated cases are to be believed, the cases pursued involve instances of clearly fraudulent conduct:

- [SEC v. Godwin, et al.](#) (former CEO and CFO allegedly fabricated 99% of revenues from fraudulent and fictitious sales)
- [SEC v. Gaithright, et al.](#) (allegedly charging customers for fuel that was not actually delivered)
- [SEC v. Pence](#) (company allegedly told its auditors it had a \$2.3 million CD investment that in fact did not exist)
- [SEC v. Tuzman, et al.](#) (recognition of \$1.5 million in revenue for sale of a product that was allegedly never delivered or paid for)
- [SEC v. DiMaria, et al.](#) (CFO allegedly instructed others to book round dollar amounts of additional revenue without any support)
- [SEC v. Sutcliffe](#), (finance director allegedly revised accounting models to insert revenues that did not have factual support).

Based on McGuire's comments at Friday's conference, and an analysis of recent cases, SEC Enforcement appears to be on a continued upward trajectory in the area of financial reporting fraud.

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