



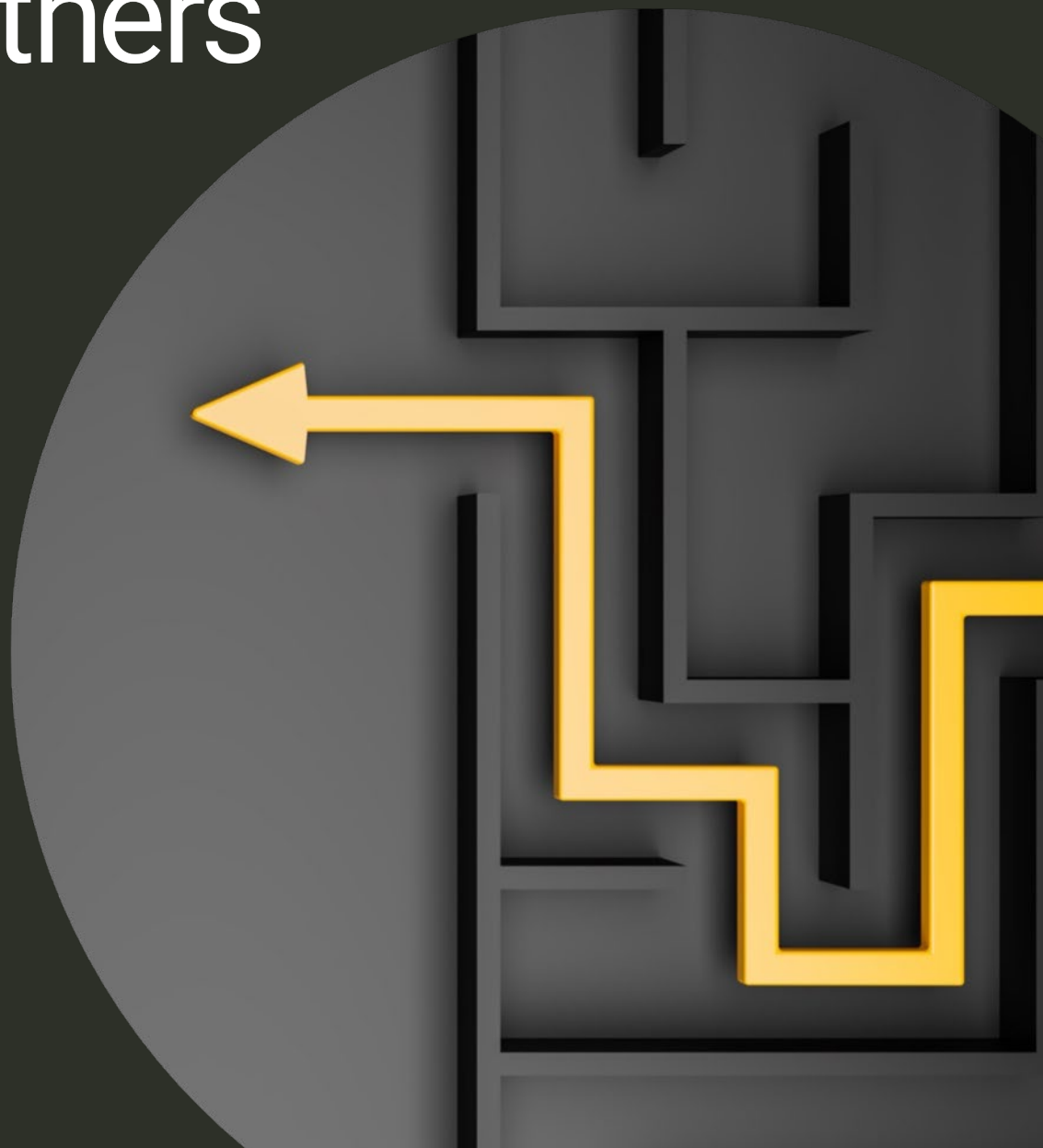
AlixPartners

# STATE OF PLAY FOR SEC ENFORCEMENT: ONE YEAR INTO NEW LEADERSHIP

CAITLYN CAMPBELL  
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Enforcement Outlook Series | June 21, 2022

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# AGENDA

- Overview of Current Enforcement
- Public Company Developments
  - Materiality Considerations
  - Disclosure Issues
  - Gatekeepers
  - SPACs



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# “NEW” ADMINISTRATION



Gary Gensler  
SEC Chair  
April 2021



Gurbir Grewal  
Director of Enforcement  
July 2021



Sanjay Wadhwa  
Deputy Director  
August 2021

# SEC INVESTIGATION PROCESS

## 1 Source

- Tip, complaint, or referral
- Whistleblower complaints\*
- Self-reporting
- Proactive initiative



## 3 Analysis

- Forensic review\*
- Chronology development
- Accounting analysis
- Legal analysis

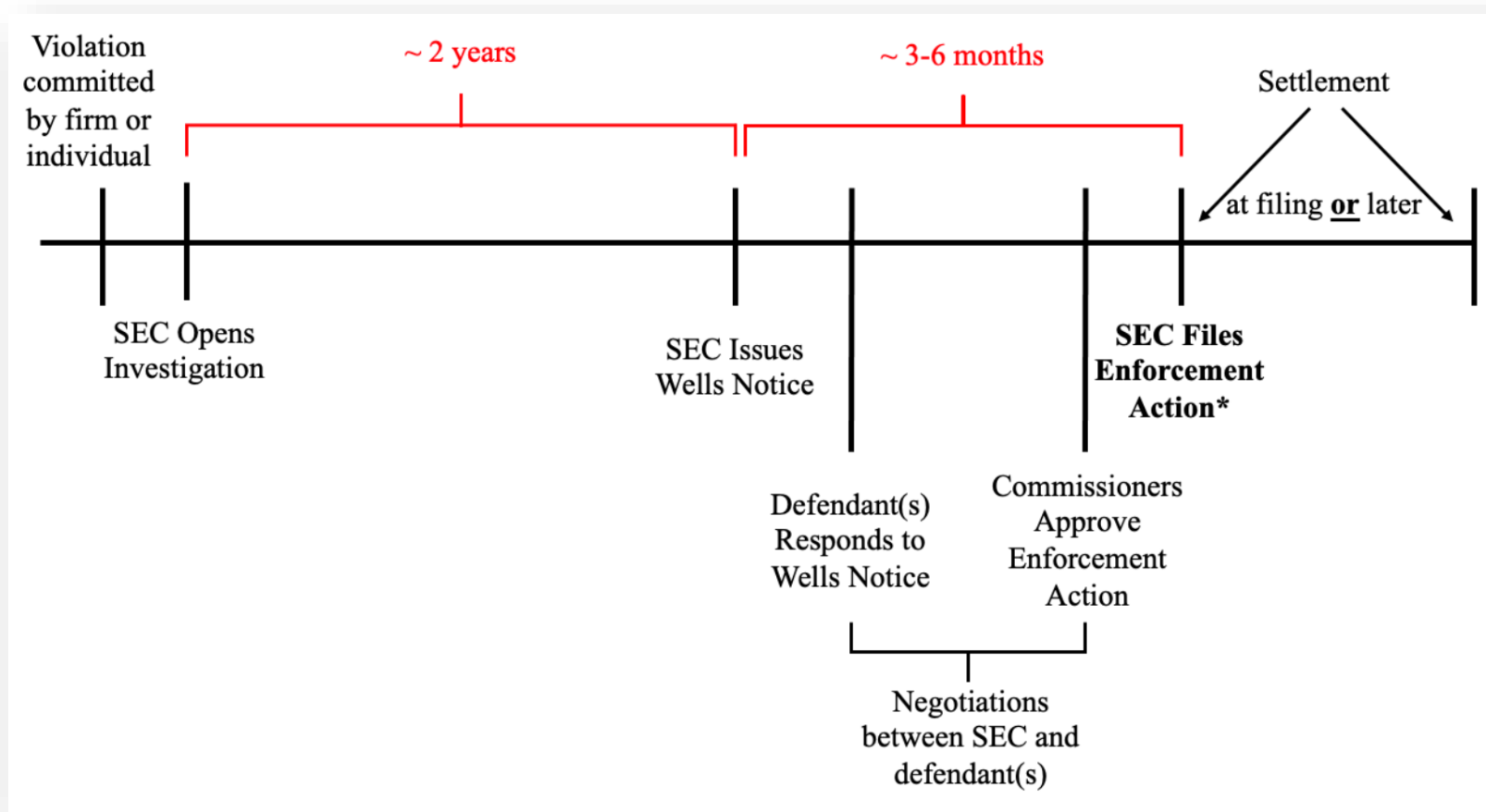
## 2 Collection

- Documents (emails, files, memos)
- Data\* (accounting systems)
- Witnesses (interviews, testimony)

## 4 Resolution

- Wells process\*
- Settlement
- Litigation

# LIFECYCLE OF AN ENFORCEMENT ACTION

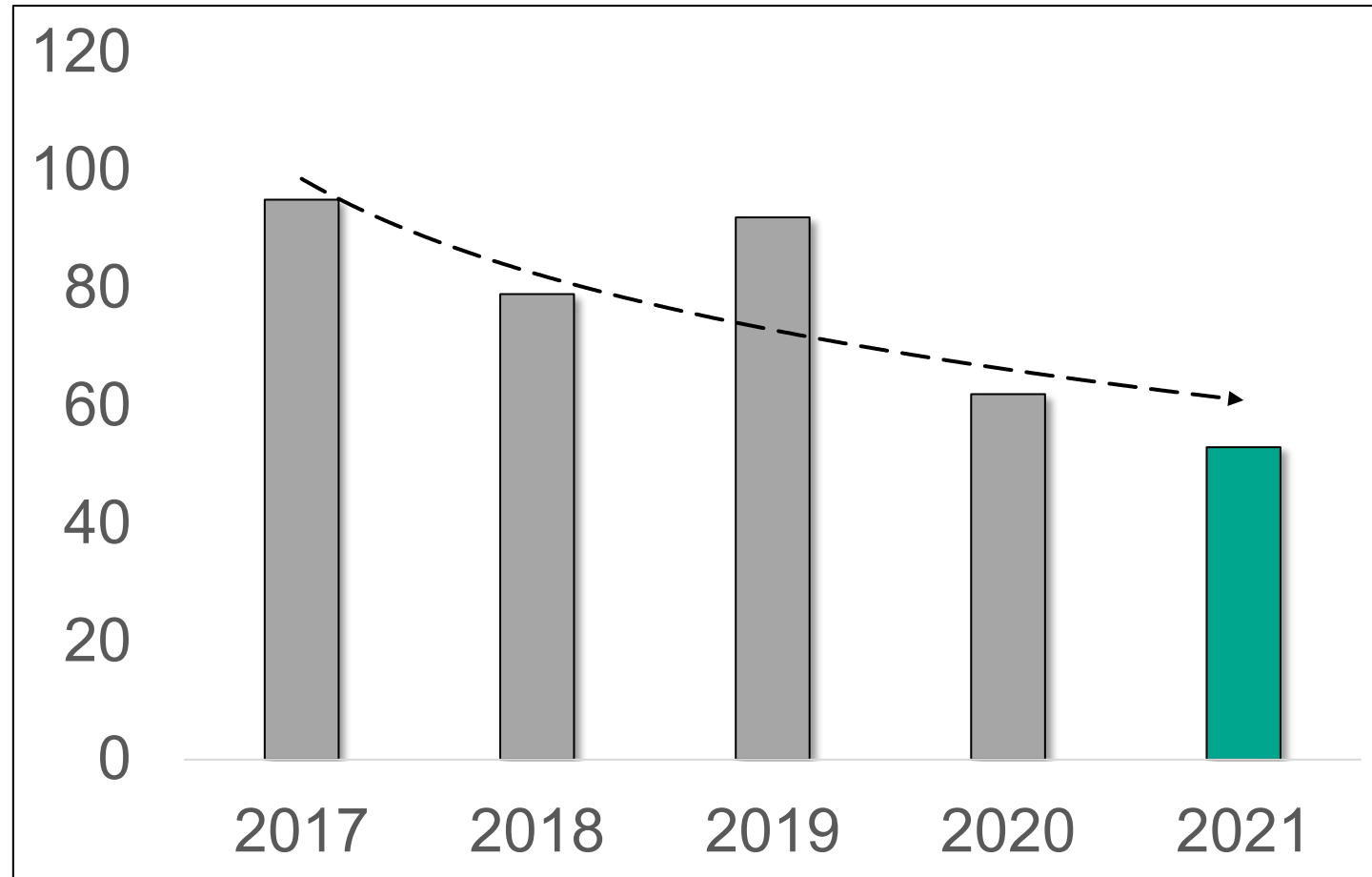


Source: The SEC's September Spike: Regulatory Inconsistency with Fiscal Year | Donelson, Kubic, Toynbee

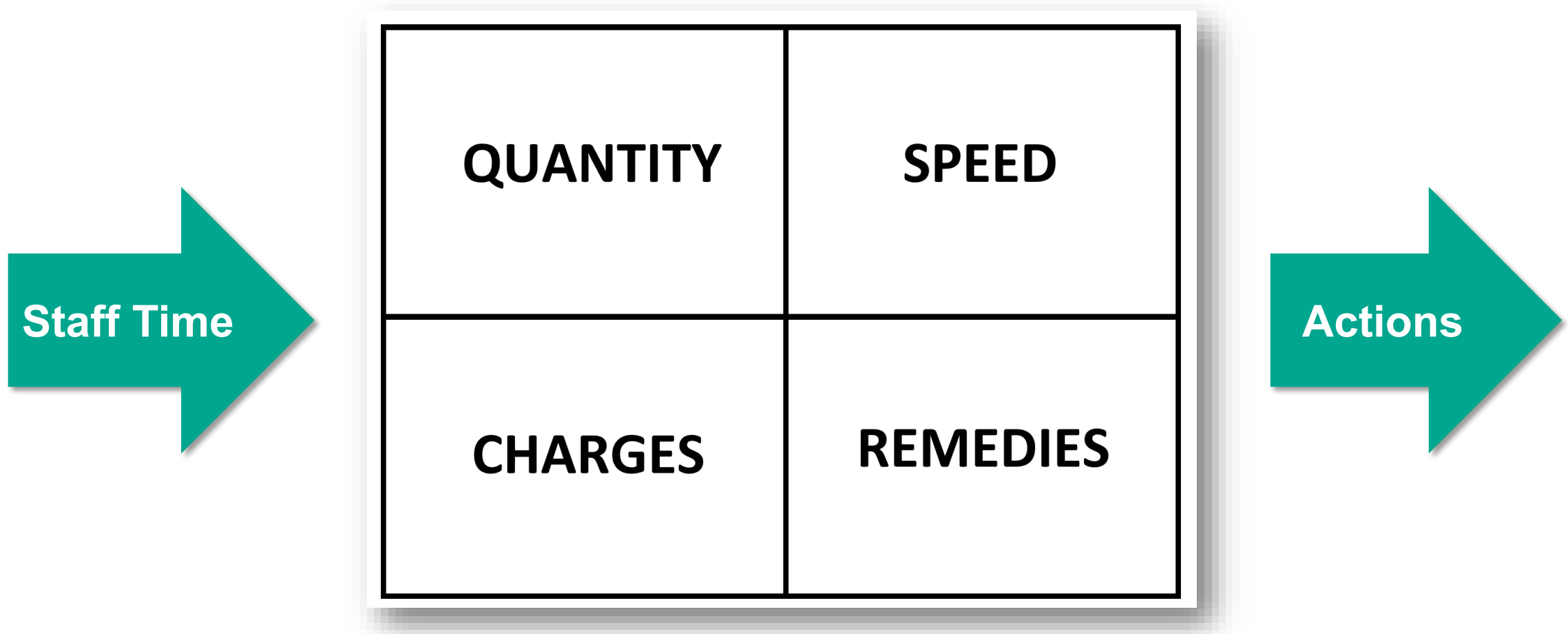
# ENFORCEMENT ACTIONS BY FISCAL YEAR

| SEC Activity                          | 2014       | 2015       | 2016       | 2017       | 2018       | 2019       | 2020       | FY 2021    |
|---------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Filed Actions                         | 755        | 807        | 868        | 754        | 821        | 862        | 715        | 697        |
| <b>Stand-Alone Actions</b>            | <b>413</b> | <b>507</b> | <b>548</b> | <b>446</b> | <b>490</b> | <b>526</b> | <b>405</b> | <b>434</b> |
| Disgorgement and Penalties (Billions) | \$4.2      | \$4.0      | \$4.1      | \$3.7      | \$4.0      | \$4.4      | \$4.7      | \$3.9      |

# ISSUER REPORTING ACTIONS BY FISCAL YEAR



# BALANCING ENFORCEMENT PRIORITIES





# MATERIALITY

- March 2022 Statement by Paul Munter (OCA)
- Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors

## Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors



Paul Munter  
*Acting Chief Accountant*

March 9, 2022

### Introduction<sup>[1]</sup>

Under our federal securities laws, public companies are required to disclose certain financial and other information to investors. The basic premise of this disclosure-based regulatory regime is that if investors have timely, accurate, and complete financial and other information, they can make informed, rational investment decisions.

Accordingly, providing investors with high quality financial information, including financial statements prepared in compliance with generally accepted accounting principles ("GAAP"), should be the focus of all those involved in financial reporting. Management is responsible for providing investors with GAAP-compliant financial statements, so whenever a material error is identified in previously-issued financial statements,<sup>[2]</sup> investors must be notified promptly and the error must be corrected. The determination of whether an error is material is an *objective assessment* focused on whether there is a substantial likelihood it is important to the reasonable investor.<sup>[3]</sup>

### Concept of Materiality and the Correction of Material Errors

Central to the process a registrant must follow when an error is identified in its historical financial statements is determining whether the error is *material* to those historical financial statements. The Supreme Court has held that a fact is material if there is:

# ENVIRONMENTAL, SOCIAL, AND GOVERNANCE

- ESG criteria are a set of standards that socially conscious investors use to screen potential investments
- March 2021: SEC announces Enforcement Task Force
- April 2022: Complaint against Vale SA, a Brazilian mining company, alleging false and misleading claims about the safety of its dams prior to the collapse of its Brumadinho dam, which caused 270 deaths
- March 2022: SEC proposes rules that will require issuers to enhance and standardize climate-related disclosures

# EPS INITIATIVE

- Use of data analytics to uncover accounting and disclosure violations
  - Examples: Interface, Fulton, Healthcare Services Group
  - Patterns of meeting or slightly exceeding consensus EPS estimates
- Imposed significant penalty for alleged improper earnings management
  - \$8 million penalty in April 2022 settlement with pest-control service company to resolve charges of improper earnings management practices
  - Also charged the company's then-CFO for causing financial reporting, books and records, and internal controls violations, fining him \$100,000

# GATEKEEPERS

- Repeated emphasis on the role of gatekeepers
- Recent actions against auditors for violations of Rule 102(e)

*Encouraging your clients to play in the grey areas or walk right up to the line creates significant risk. It's when companies start testing those lines that problems emerge, and rules are broken. And even if that's not the case, the public loses faith in institutions that appear to be trying to get away with as much as they can. That's why gatekeepers will remain a significant focus for the Enforcement Division, as evidenced by some of our recent actions.*

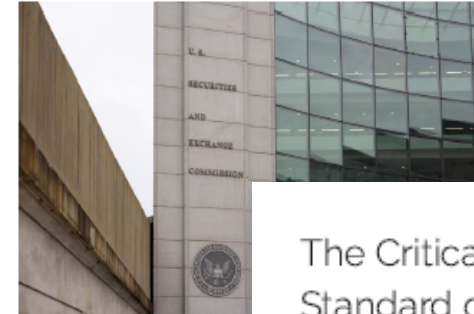
- Gurbir Grewal

# AUDITOR INDEPENDENCE

- Over the last year, SEC staff emphasized importance of auditors as gatekeepers and specifically focused on auditor independence
- March 2022: WSJ reported that the SEC was conducting a sweep, asking audit firms whether consulting and non-audit services undermined their ability to conduct independent audits
- June 2022: Munter statement emphasizing the importance of high-quality audits, conducted by professional, objective, and skilled accountants that are independent of their audit clients

## Big Four Accounting Firms Come Under Regulator's Scrutiny

SEC has launched probe into how firms manage conflicts of interest caused by sale of nonaudit services



The Securities and Exchange market gatekeepers,  
PHOTO: ALYSSA SCHUKAR FOR THE

By [Dave Michaels](#) [Follow](#)  
Updated March 15, 2022 2:45

WASHINGTON—Regulatory interest at the nation's largest nonaudit services they sell public companies' financial

## The Critical Importance of the General Standard of Auditor Independence and an Ethical Culture for the Accounting Profession<sup>[1]</sup>



**Paul Munter**  
*Acting Chief Accountant*

June 8, 2022

### Introduction

High-quality audits are critical to the process of providing decision-useful financial information for the benefit of investors, and auditors<sup>[2]</sup> serve an important gatekeeping and investor protection function by helping to ensure that issues are promptly identified and addressed.<sup>[3]</sup> The Commission has long-recognized that audits by professional, objective, and skilled accountants that are independent of their audit clients contribute to both investor protection and investor confidence in the financial statements.<sup>[4]</sup> As such, the Commission's auditor independence rule is integral to its mandate to protect investors and is fundamental for promoting investor confidence in the quality of financial disclosures. Rule 2-01 of Regulation S-X sets forth the Commission's auditor independence requirements and emphasizes the importance of an accountant's independence from its audit client in both fact and appearance.<sup>[5]</sup>

# SEC FOCUS ON SPACS

- Public statements
- Proposed rules
- Swift enforcement actions

# SEC FOCUS ON SPACS

- Focus on newly public companies after the de-SPAC transaction
- March 2021 statement
  - Does management have appropriate expertise in-house?
  - Does management understand the internal control requirements?
  - Does the board have a clear understanding of its roles, responsibilities, and fiduciary duties?

## Financial Reporting and Auditing Considerations of Companies Merging with SPACs



Paul Munter

*Acting Chief Accountant*

March 31, 2021

### Introduction<sup>[1]</sup>

In recent years, we have seen significant market developments and innovation in our capital markets, with a variety of structures being utilized to raise capital and facilitate taking private companies public.

The U.S. capital markets are often described as the envy of the world, and we in OCA continue to promote healthy public markets. However, our efforts to facilitate capital formation are not carried out in isolation since each tenet of the U.S. Securities and Exchange Commission's ("SEC") three-part mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation is vital to our work. Regardless of the form or structure used to access our markets, we are always keenly focused on protecting investors. High quality financial reporting—a result of stakeholders throughout the financial reporting system working together in fulfillment of their respective professional responsibilities—is a key component of investor protection. High quality financial reporting





# 2022 ENFORCEMENT OUTLOOK WEBINAR SERIES: IS YOUR ORGANIZATION PREPARED?

- Hosted on the second Tuesday of each month from 12:00 - 1:00 pm ET
- Please contact Tyler Chalmers ([tchalmers@mwe.com](mailto:tchalmers@mwe.com)) to pre-register for an upcoming webinar

## UPCOMING TOPIC

**JULY 12: Cyber/Data Privacy**

# QUESTIONS?

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