



January 31, 2023

By Electronic Mail

The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
The Honorable Mark T. Uyeda
The Honorable Jaime Lizárraga
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair Gensler and Commissioners Peirce, Crenshaw, Uyeda, and Lizárraga:

I am pleased to transmit to you a summary of the Public Company Accounting Oversight Board (PCAOB or Board) Office of Internal Oversight and Performance Assurance's (IOPA) performance review, titled *Division of Enforcement and Investigations Program Review*, IOPA Review No. 22-DEI-01. The Board formed IOPA to promote the confidence of Congress, the Securities and Exchange Commission, and the public in the integrity of PCAOB programs and operations. IOPA conducted this review in conformance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

IOPA undertook this review to evaluate the operational effectiveness and efficiency of the Division of Enforcement and Investigations' (DEI or Division) enforcement and investigations processes. As the summary sets forth, IOPA found DEI's processes to be well-organized and effective, and DEI staff to be qualified, experienced, and committed to quality. Overall, IOPA found significant improvement in technology, operating processes, and procedural guidance since 2018. Further, DEI has committed resources to implementing effective technology solutions, having migrated their work product to a comprehensive case management tool, which is leveraged to increase efficiency and streamline workflows.

During the course of their review, IOPA staff identified opportunities they believe will mitigate risks currently facing the Division. Specifically, IOPA recommended that DEI:

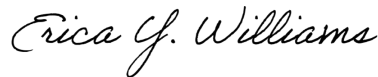
- continue to pursue alignment with the Board's general sanctions approach and the implementation of updated sanctions guidance, including by aligning quantitative approach with the Board's approach;
- proactively revisit and augment DEI staffing requirements to support DEI's new/expanded work scope;

- eliminate redundant layers of review of DEI work product and key documents;
- establish a top-level procedural or document map that links all departmental procedure documents together; and
- formalize and reinforce communication and alignment with the PCAOB's Office of International Affairs for investigations and enforcement actions against non-U.S. firms and their associated persons.

The Board has reviewed IOPA's recommendations and management's responses thereto and has approved the transmittal of the summary to you.

Please feel free to contact the Director of IOPA, Ryan Sack, at (202) 808-1574, or me if you have any questions or would like any additional information about the review.

Sincerely,



Erica Williams
Chair

Enclosure: *Division of Enforcement and Investigations Program Review, IOPA Review No. 22-DEI-01 (June 2022)*

Internal Oversight and Performance Assurance

**Division of Enforcement
and Investigations
Program Review**

IOPA Review No. 22-DEI-01

June 2022

EXECUTIVE SUMMARY

Background

The Office of Internal Oversight and Performance Assurance (IOPA) conducted a Program Review of the Public Company Accounting Oversight Board’s (PCAOB or the Board) Division of Enforcement and Investigations (DEI) during the period of March through June 2022 (the “Review”).

Section 105(a) of the Sarbanes-Oxley Act of 2002, as amended (the “Act”), directs the Board to “establish fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.”¹ These procedures are described in Section 5 of the Rules of the Board and provide that the Board may conduct informal inquiries and/or formal investigations of registered public accounting firms and associated persons of those firms that appear to have violated provisions of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto (including the rules of the Securities and Exchange Commission (SEC) issued under the Act), or professional standards. At the time of our Review, DEI was the PCAOB’s fourth largest program area by headcount, with a 2022 budget of \$19.9 million.²

DEI manages the PCAOB’s tips process, conducts inquiries and investigations, makes recommendations to the Board to initiate disciplinary proceedings, prosecutes proceedings before the Board’s hearing officer, prosecutes proceedings on disapproval of registration applications on behalf of the Division of Registration and Inspections (DRI), and litigates appeals before the Board.

DEI has traditionally identified matters for investigation from inspection referrals, publicly available information, and tips and regulatory referrals. Over the 2020-2021 period, DEI also increased collaboration with the Office of Economic and Risk Analysis (OERA) to perform data analytics for financial statement characteristics that DEI believes may indicate heightened risk of accounting and audit deficiencies.

To date, a matter identified for investigation generally begins as an informal inquiry, whereby the DEI Director is authorized to request documents, information, and testimony.³ Based on analysis performed during the informal inquiry, DEI may close the inquiry, track the matter for early resolution, or request that the Board issue an order of formal investigation (OFI).⁴

The Board votes to approve or deny DEI’s recommendation to issue an OFI. If approved, DEI can compel cooperation, including testimony and the production of audit workpapers and other documents, from the registered firm or its associated persons.⁵ If DEI staff determine that charges may not be supported at any stage, or do not recommend moving forward for other reasons, DEI may close the matter.

¹ See § 105(a) of the Act.

² PCAOB 2022 Budget.

³ PCAOB Rule 5100, *Informal Inquiries*.

⁴ PCAOB Rule 5101, *Commencement and Closure of Investigations*.

⁵ PCAOB Rule 5102, *Testimony of Registered Public Accounting Firms and Associated Persons in Investigations*, and PCAOB Rule 5103, *Demands for Production of Audit Workpapers and Other Documents from Registered Public Accounting Firms and Associated Persons*.

If DEI staff recommend settling either an informal or formal matter, they review anticipated charges with the DEI Director. If approved to proceed, staff may gauge the respondent's interest in settlement through a charging call or letter. DEI staff may also invite respondents to submit a Statement of Position at this time, which lays out respondents' interests and positions relevant to the investigation. DEI staff incorporate respondents' analysis and rebuttal of each component of the Statement of Position into their assessment, as appropriate.

In settled matters, sanctions prescribed by the PCAOB may include suspension or revocation of firm registration, suspension or bar of a person from association with any registered firm, limitations on the operations of a firm or associated person, civil money penalties, censures, and additional professional education or training, among other sanctions.⁶ DEI staff may recommend adjusting their sanctions recommendation based on factors including extraordinary cooperation and early resolution. If no settlement is reached, DEI staff may recommend and the Board may issue a litigated order instituting proceedings (OIP), which in usual circumstances is initially adjudicated by the PCAOB's hearing officer.⁷

The Act requires that disciplinary proceedings "shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing."⁸ The non-public nature of disciplinary proceedings may incentivize firms to prolong matters and/or litigate in order to shield themselves from public scrutiny. Notably, the non-public nature of the Board's disciplinary proceedings contrasts with the public nature of the SEC's enforcement proceedings.⁹ Legislation to make PCAOB proceedings public was introduced in 2011 but has not progressed beyond the legislative proposal stage.

Objective and Scope

The purpose of our Review was to evaluate DEI's enforcement and investigations processes for operational effectiveness and efficiency. The scope of our Review covered DEI processes and procedures in place as of June 2022. To accomplish our objective, we:

1. Reviewed and evaluated documented policies and procedures guiding enforcement and investigations processes.
2. Interviewed DEI leadership and staff to gain an understanding of the division's work streams and related interactions with other divisions and offices and with external stakeholders, including the SEC.
3. Interviewed relevant staff in DRI, Office of the General Counsel (OGC), Office of International Affairs (OIA), Office of the Chief Auditor (OCA), and OERA to understand how they collaborate with DEI and whether any opportunities for improvement exist.
4. Analyzed inception-to-date sanctions data, including bars and civil monetary penalties, to gain insight on historical trends and current sanctions levels.

⁶ See § 105(c)(4) of the Act.

⁷ DEI, firms, or associated persons may appeal the hearing officer's initial decision to the Board, and firms or associated persons may appeal to the SEC for review of final Board determinations.

⁸ See § 105(c)(2) of the Act.

⁹ See 17 C.F.R. § 201.301.

5. Benchmarked sanctions data over the past 6 years with the UK’s Financial Reporting Council, another International Forum of Independent Audit Regulators (IFIAR) member regulator, and analyzed the level and growth of enforcement resources since 2020.¹⁰
6. Reviewed the status and output of transformation projects and system implementation/migration projects.¹¹

We conducted our Review in conformance with the Institute of Internal Auditors’ *International Standards for the Professional Practice of Internal Auditing*.

Summary Results and Conclusion

In general, we found DEI’s enforcement and investigations processes to be well-organized and effective. DEI is staffed with qualified and experienced attorneys, accountants, paralegals, and project coordinators who demonstrate a commitment to quality. DEI staff demonstrated a high level of expertise and professionalism in response to IOPA inquiries, and staff from other divisions/offices who work directly with DEI reported high regard for the division’s ability to collaborate effectively.

DEI has performed significant and effective work since 2018 to evaluate and refine its divisional processes, including a proactive divisional self-assessment in 2020. This work resulted in the development of internal guidance to promote consistency and efficiency. Finally, DEI has committed resources to implementing advanced technology solutions. The division has migrated their work product to a comprehensive case management tool, which is leveraged to increase efficiency and streamline workflows.

Overall, we found significant improvement in technology, operating processes, and procedural guidance since the prior IOPA review.¹² During the course of our Review, we did identify opportunities we believe will mitigate risks currently facing DEI. These observations are described further in the detailed section of this report. The brief table below summarizes and categorizes the audit observations on a risk scale.¹³

¹⁰ IOPA selected this IFIAR-member regulator on the basis of it being most comparable in size and structure, among all the regulators, to the PCAOB.

¹¹ The term “transformation projects” refers to the PCAOB’s 2018 Board-directed initiative to improve operational effectiveness and efficiency across all divisions and offices. Each division and office identified specific transformation projects applicable to their unique operations.

¹² [Review of the Public Company Accounting Oversight Board’s Enforcement and Investigations Program, IOPA-2012-001 \(Jan. 10, 2012\)](#).

¹³ See Appendix A for IOPA Risk Rating Legend.

Low Risk (2)	Moderate Risk (3)	Significant Risk (0)	Material Risk (0)
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Our observations, based on the fieldwork completed as of June 2022, are briefly described below –

- **Align with the Board’s Sanctions Approach** – The Board is likely to institute a higher level of enforcement sanctions to promote compliance with professional standards and other related laws and rules governing the audits of public companies and broker-dealers.¹⁴

We recommend that DEI continue to pursue alignment with the Board’s general sanctions approach. DEI should ensure it employs a methodology that yields sanctions that will act as an effective deterrent for firms of all sizes. To the extent possible, DEI should review in-process settlements for consistency with the Board’s philosophy.

Additionally, we recommend the Board consider publicly communicating its sanctions philosophy to reduce the inclination of firms to litigate when enhanced sanctions are sought. Publicly communicating the Board’s sanctions philosophy would also increase public and industry awareness of important sanctions factors that may not be widely known.

- **Augment Staff Proactively for Emerging Work Scope** – We note that current DEI staffing resources are operating at capacity. We recommend that DEI revisit its evaluation of future staffing requirements, to consider the convergence of new/expanded work scope and build in necessary lead-time for new staff recruiting, training, and job experience.

- **Eliminate Redundant Layers of Review** – DEI employs a review structure that requires key documents and work product be subject to multiple layers of review. DEI staff noted that multiple layers of review are often cumbersome, cause bottlenecks, and negatively impact staff morale.

We recommend that DEI conduct a formal analysis examining ways to streamline its internal review processes, including by examining workflows for opportunities to reduce layers of review and clearing of review comments, particularly for internal documents.

IOPA further recommends that, in consultation with the Board, DEI’s formal analysis assess opportunities to streamline the Division’s OFI processes, including the optimal format, content, and timing of recommendations made to the Board.

- **Establish a Top-Level Procedure Document** – DEI has a comprehensive collection of internal procedures that govern their work, but these documents are somewhat disaggregated for the end user. A top-level procedure or document map that links all departmental procedure documents together in an overall process flow would help ensure that the documents are accessible, understandable, and current. Additionally, a top-level document can help new staff understand divisional processes and how they flow together.

¹⁴ Subsequent to the period of our fieldwork, the Board adopted a Strategic Plan for 2022-2026 that includes, as an enforcement objective, “Impose More Significant Penalties and Other Relief.” Our expression of a likelihood of higher sanctions reflects the environment at the time of our review of the existing sanctions philosophy.

We recommend that DEI formally consider the benefits of developing a top-level document that describes and integrates DEI process flows from a high level and refers staff to the underlying process and subprocess written procedures that support the various work streams.

● **Reinforce Communications with OIA** – IOPA found that DEI’s current levels of communication with other staff involved in its processes are largely effective. We see an opportunity for DEI to formalize and reinforce existing communication and alignment with OIA on investigations and enforcement actions against non-U.S. firms and their associated persons by instituting a formal kickoff meeting on all such matters.

We recommend DEI reinforce its existing collaboration processes with OIA by instituting a formal kickoff meeting for all non-U.S. investigations. Additionally, the formal DEI-OIA kickoff meeting may be used to coordinate future touchpoints as investigative milestones are met.

The Acting Director of the Division of Enforcement and Investigations provided responses indicating concurrence with our audit observation and a commitment to corrective actions that are responsive to our recommendations.

We thank all personnel who supported our review, both at the senior management and staff operating level, for their courtesy and cooperation throughout this assessment.

APPENDIX

Appendix A – Risk Classifications and Definitions

To provide the reader with further perspective of the degree of risk IOPA attributes to each audit observation, we have assigned color-coded risk ratings as explained in the legend below.

Degree of Risk and Priority of Action	
Material	The degree of risk is unacceptable and poses a significant level of financial, compliance or operational risk to the organization. As such, complete remediation is generally required no later than one month from the time of the finalized IOPA report.
Significant	The degree of risk is undesirable and poses a significant financial, compliance or operational risk to the organization. As such, complete remediation is generally required no later than three months from the time of the finalized IOPA report.
Moderate	The degree of risk is undesirable and poses a moderate financial, compliance or operational risk to the organization. As such, complete remediation is generally required no later than six months from the time of the finalized IOPA report.
Low	The degree of risk appears reasonable but there are opportunities to further reduce risk through improvements to existing policies, procedures, and/or operations. As such, management should take actions to reduce the risks to the organization.

IOPA used its professional judgement in determining the overall ratings presented in the Executive Summary of this report. The report is intended to provide management with information about the condition of risks and internal controls at a point in time.