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2024 DEVELOPMENTS FOR AUDITOR REGULATION UNDER THE U.S. SECURITIES LAWS

In this article, the authors discuss the impact of recent, high-profile auditing failures on the public's confidence in independent auditors as gatekeepers of the U.S. financial markets, and new developments in regulatory enforcement and litigation to hold auditors accountable. The authors begin by reviewing regulators' enforcement record for audit firms in 2024. Then, the authors analyze a recent U.S. Supreme Court decision that could impact financial regulators' ability to prosecute enforcement actions against auditors before internal tribunals. Finally, the authors discuss recent successes by investors to pursue private rights of action against auditors but highlight the legal headwinds such claimants face in the near future.

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United States securities laws have long enshrined the role of independent public auditors as gatekeepers for the financial markets and watchdogs for the public investor. Thus, publicly registered companies that raise capital through access to the public markets and list their securities on a national exchange must have the accuracy of their annual financial statements and the sufficiency of their internal controls over financial reporting certified by an independent public accountant. Through these independent audits, the securities laws intend to facilitate confidence for the public investor and ensure the market's ability to make informed investment decisions. As the U.S. Supreme Court recognized four decades ago in *U.S. v. Arthur Young & Co.*, independent audits “obviate the fear of loss from reliance on

inaccurate information, thereby encouraging public investment in the Nation's industries.”¹

In recent years, high-profile auditing failures exposed by bank collapses, accounting fraud, and even admissions of criminal conspiracies to deceive regulators have caused regulators and industry commentators to increasingly acknowledge a “crisis of confidence” around the value of the audit report. The situation has grown so bizarre that, just last year, one of the country's top accounting firms sought to evade an investor lawsuit concerning its deficient audits by arguing to the Second Circuit Court of Appeals that its own audit reports were

¹ 465 U.S. 805, 819 n. 15 (1984).

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