

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 58 No. 5 March 5, 2025

THE VALUE OF ENGAGING OUTSIDE COUNSEL IN INTERNAL CORPORATE INVESTIGATIONS

Independent outside counsel play a critical role in assisting audit committees in internal investigations, while reinforcing their core missions of independence and oversight. In this article, we provide practical guidance on the value of engaging outside counsel in corporate investigations, including the legal requirements applicable to audit and special committees, the important roles that outside counsel play in internal investigations, and the serious risks that companies may face by conducting internal investigations without the use of independent outside counsel.

By Rizwan A. Qureshi and Jay K. Simmons *

Dating back to the 1940s, in order to encourage accurate financial disclosures, the Securities and Exchange Commission (“SEC”) has encouraged publicly traded companies to adopt policies and procedures for the use of independent audit committees.¹ Today, acknowledging that managers may face market pressures exacerbated by compensation incentives focused on short-term stock appreciation — and the resulting potential for managers’ personal interests to diverge from the long-term best interests of the company’s shareholders — the SEC enforces substantive rules

requiring the use of independent audit committees. In 2003, the SEC issued Final Rules to implement Section 301 of the Sarbanes-Oxley Act of 2002.² Under these

¹ See, e.g., *In re McKesson & Robbins*, Accounting Series Release (ASR) No. 19, Exchange Act Release No. 707 (Dec. 5, 1940).

² Final Rule on Standards Relating to Listed Company Audit Committees, 68 Fed. Reg. 18788, 18788 (Apr. 25, 2003) [hereinafter “Final Rule”] (adopting new Rule 10A-3 and amending Forms 20-F and 40-F, Items 7 and 22 of Schedule 14A under the Exchange Act of 1934, amending Item 401 of Regulation S-B and Item 401 of Regulation S-K under the Securities Act of 1933, and amending Form N-CSR under the Exchange Act and the Investment Company Act of 1940). See generally 17 C.F.R. §§ 430.10A-3 [hereinafter “Exchange Act

* RIZWAN A. QURESHI is a partner in Reed Smith LLP’s Global Regulatory Enforcement Group where he has successfully represented corporations, including audit committees, facing complex investigations by the Department of Justice and other domestic and international regulators. Prior to joining Reed Smith’s Washington, D.C. office, Rizzy was an Assistant United States Attorney in the District of Columbia. JAY K. SIMMONS is an associate in the firm’s Global Regulatory Enforcement Group, where his practice focuses on antitrust and other complex commercial litigation and investigations matters. Prior to joining Reed Smith, Jay served as a law clerk to the Honorable Philip P. Simon in the Northern District of Indiana. Their e-mail addresses are rqureshi@reedsmith.com and jay.simmons@reedsmith.com.

FORTHCOMING

- THE CONVERGENCE OF ANTI-CORRUPTION AND NATIONAL SECURITY ENFORCEMENT