Auditors “Monkeying Around with Documents,” Top PCAOB Cop Says

The agency's probes are being hamstrung by non-cooperation, the oversight board's enforcement chief contends.

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Claudius Modesti, the director of the Public Company Accounting Oversight Board’s Division of Enforcement and Investigations, revealed yesterday that the PCAOB is running into resistance -- and even evidence of tampering -- by the accounting firms it regulates. “We’re facing a non-cooperation situation across audit firms of various sizes,” he said during a Practicing Law Institute event.

When thePCAOB’sinspectors tell a firm they are coming to look over its work, “people will start monkeying around with documents,” Modesti says. Most of these incidents are hidden from public view, however, since details about the PCAOB’s routine inspections are scarce. And until a settlement is reached, the regulator can’t discloseanything about ongoing investigations that could lead to enforcement actions**.**

But one case finalized last summer did publicize at least one such incident. Last August, the PCAOB imposed [a three-year bar on a former Ernst & Young partner](http://www3.cfo.com/article/2011/8/regulation_pcaob-penalizes-ey-auditors-for-altering-work-papers) accused of changing and backdating documents the regulator used for evaluating the firm’s work. The accountant, Peter O’Toole, also agreed to pay a $50,0000 penalty.

However, if the PCAOB is pursuing any other similar enforcement actions against accountants or accounting firms for tampering with evidence, it's not public knowledge. Nothing about PCAOB proceedings– not even the fact that an accounting firm is under investigation – can be publicly revealed until after a settlement. As a result, respondents to its accusations tend to push back for delays.

The delays and cloaked status of these cases haven't sat well with PCAOB board members and staff. They've requested legislation to address what they see as the problem that the public is not receiving information it needs to know. They have urged Congress to tweak the Sarbanes-Oxley Act so that more information about ongoing litigation between the Board and accounting firms can be disclosed.

Sometimes, the PCAOB may be scrutinizing the actions of an accounting firm related to a significant Securities and Exchange Commission against a company. But even in such cases, the public may not be aware of the fact that the PCAOB is pursuing an enforcement action against the company's accounting firm, Modesti noted. As a result, there is a significant delay on any deterrent effect such an action would have on auditor misdeeds. Bills in the House of Representatives and the Senate would make the PCAOB’s disciplinary proceedings public.

Similarly, the SEC faces a battle with witnesses to misconduct who are “less than candid,” according to Robert Khuzami, director of the SEC’s Division of Enforcement, who also spoke at the PLI event, which was largely attended by corporate attorneys.

Khuzami expressed envy of the Commodity Futures Trading Commission, which recently gained the authority to go after witnesses who lie to it. While people who give inaccurate testimony to the SEC are subject to criminal perjury charges, the SEC itself can’t penalize them. “It’s a serious problem, and frankly I wish we had the authority that the CFTC has,” Khuzami said.