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## SEC Update

September 2013

### No Bar is Off-Limits: SEC Enforces 2004 Order Barring Accountant

In a rare and aggressive move, the Securities and Exchanges Commission (SEC or Commission) recently sought a court order enforcing an almost decade-old SEC suspension of an accountant and forcing the accountant to disgorge over half a million dollars of compensation earned for providing prohibited services (plus pre-judgment interest). The SEC has infrequently filed actions to enforce practice bars imposed on accountants (and lawyers). Given the SEC's newly announced enforcement initiative targeting "gatekeepers," this case is an important reminder to barred accountants and attorneys (and companies that hire such persons) that the SEC could seek to hold them liable for conduct that violates a bar, no matter how stale the bar is.

In 2004, the SEC sued Del Global Technologies Corp. and several of its former officers and directors, including its former Chief Financial Officer, Michael Taber. The **SEC alleged** that the defendants perpetrated a financial fraud at Del Technologies from 1997 to 2000 that resulted in the company overstating its revenues and making numerous misstatements to the SEC. **Taber was charged** with accounting fraud and violating the internal control and books and records rules. Taber settled the case in 2004 by consenting to a court injunction prohibiting future violations, a permanent bar from serving as a public company officer or director, and a permanent bar from "appearing or practicing before the Commission as an accountant."

Today, Taber finds himself subject to further SEC scrutiny for failing to abide by the accounting bar he consented to almost ten years ago. Indeed, **according to a lawsuit filed last month** by the SEC, the SEC believes that Taber completely ignored the accounting bar from its inception. A bar from "appearing or practicing before the Commission as an accountant" generally prohibits an accountant from preparing financial statements, opinions, and other papers filed with the SEC. Taber was fired from Del Technologies during the relevant SEC investigation and, at the time he settled with the SEC in 2004, Taber was already working as a controller for another public company (Sono-Tek). Despite consenting to the accounting bar, according to the SEC, Taber continued to provide accounting services to Sono-Tek, including preparing the company's financial statements and filing the company's periodic reports with the SEC. After leaving Sono-Tek, Taber worked for Jefferson Wells International, Inc., a professional services firm that outsourced specialists to perform accounting and other work. From 2005 to 2010, Taber was contracted out by Jefferson Wells to numerous public companies for which he allegedly provided accounting services. The SEC alleged that Taber's work at Sono-Tek and Jefferson Wells constituted "appearing or practicing before the Commission" in violation of his accounting bar. Taber's brazen disregard of the bar raised the ire of the SEC, which took the uncommon action of asking the District Court for the Southern District of New York to order Taber to comply with the SEC's accounting bar and to forfeit all the compensation he earned for providing the prohibited accounting services (\$584,650), plus prejudgment interest (\$146,849).

The SEC has rarely filed actions to enforce bars it has imposed against accountants and lawyers. The action against Taber is therefore unique and begs the question whether it was driven (at least in part) by the **SEC's recently announced enforcement initiative** to combat accounting fraud. As part of that initiative, the SEC warned it would target "gatekeepers" such as attorneys and accountants. Given the current climate at the SEC, there are several important takeaways from the Taber case.

- Barred accountants who decide to work with public companies should be careful to limit their activities so as not to be deemed to be "appearing or practicing before the Commission." This is not as straight-forward as it may seem because the SEC takes a broad view of what conduct is prohibited by a bar. The SEC takes the position that, in addition to being prohibited from directly preparing financial statements and SEC filings, barred accountants may not be involved in preparing any underlying data to be included in a document to be filed with the SEC, including the creation, compilation, or computation of such data.
- Reinstatement procedures exist under the SEC rules for barred accountants to request the SEC to lift a bar. Experienced counsel can assist a barred accountant in understanding when, how, and

under what circumstances the accountant can and should seek to have a bar lifted.

- Public companies should conduct appropriate due diligence to determine whether an employee candidate for a financial position is subject to an SEC bar. Public companies that knowingly hire a barred accountant should clearly define the scope of the employee's duties and create strict procedures to ensure that the employee does not engage in activities that could be deemed "appearing or practicing before the Commission." Moreover, although the public companies involved in the Taber case have not been charged to date, it is not difficult to conceive of a scenario where the SEC seeks to hold such a company liable, particularly given that determining whether a person is subject to an SEC bar merely requires a simple search of the SEC's website.
- These takeaways are equally applicable to lawyers barred from appearing or practicing before the Commission, as well as to persons barred by the SEC from serving as an officer or director of a public company.

For more information regarding SEC practice bars and the process for barred accountants and lawyers to apply for reinstatement under the SEC rules, please contact [Michael Rivera](#) or [Hillary Profita](#).