

## David Smyth quoted in MarketWatch Capitol Report

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Brooks Pierce partner David Smyth was quoted by reporter Francine McKenna today in a MarketWatch story titled "Rarely enforced SEC rules may give green light to earnings manipulation."

An excerpt from the article:

### A disputed outlook for enforcement of the new rules

Some observers dispute the notion that the new rules will hamper enforcement—among them Aguilar, the former critic. In an email, he said he believes company directors “will take seriously their obligation to clawback erroneously paid compensation and prevent the improper enrichment of corporate executives at the expense of shareholders.”

If company boards do that, Aguilar said, there is no need for the exchanges or the SEC to get involved.

But David Smyth, a former assistant director in the SEC’s Enforcement Division who is now a partner at Brooks Pierce in Raleigh, N.C., says the ongoing conversation required to pursue clawbacks given the number of potentially eligible restatements creates a massive burden on companies, exchanges and the SEC that might make enforcement unwieldy.

“Congress shifted a big implementation responsibility to the issuer and the penalty for non-compliance...is draconian,” Smith said. “I have a hard time seeing the SEC threatening delisting to force absent-minded or even stubborn companies to claw back compensation.”