



## Corporate Investigations Overview

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The Capitol Forum's corporate investigations team has demonstrated a consistent track record of successfully identifying **companies that have legal, regulatory, or business risk**. This report contains a sample of companies where The Capitol Forum identified and reported on potential risk.

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# Legal & Regulatory Risk Examples

In each of these cases, regulators or enforcers raised concerns about the company's business practices that were similar to the issues highlighted by The Capitol Forum.



# Acadia

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The Capitol Forum started reporting on alleged abuse and violations at Acadia Healthcare facilities in 2017. A pattern soon emerged of prioritizing profits over patient care and safety. Current and former employees alleged problematic conditions at treatment centers, including understaffing, questionable HR practices and improper intake and release practices designed to maximize revenue. The extensive findings from The Capitol Forum investigation pointed to potential regulatory scrutiny as well as potentially significant legal liability in connection with patient harm.

Continued investigation of Acadia behavioral health facilities and legal documents obtained by The Capitol Forum revealed a number of risks and vulnerabilities for Acadia facilities across several states. Acadia's cost cutting business practices and violation rates compared to other facilities resulted in referral holds from state departments. Former employees disclosed to The Capitol Forum an incentive plan to steer patients to higher-cost treatment centers, a possible violation of federal anti-kickback law. Employees also disclosed that understaffed medication-assisted treatment centers routinely dispensed drugs to patients without providing necessary counseling sessions despite government requirement to do so. Employees alleged they were instructed to move patients through clinics quickly, with little to no time to properly evaluate and treat patients and that management was aware of employees submitting false notes for counseling and therapy session that did not occur. These experiences mirror those in a whistleblower complaint in 2022 by a former medical director which alleged clinics routinely copied and reused the same falsified group therapy notes for different patients, and that Acadia was aware and took no corrective action.

In September 2024, the DOJ entered into a \$19.85M settlement with the company related to Acadia's behavioral health centers. An analysis by The Capitol Forum of the settlement found the allegations similar to conduct at Acadia's network of Comprehensive Treatment Centers for substance abuse. Requests for information and subpoenas soon followed from the U.S.



Attorney's Office for the Southern District of NY and Western District of Missouri respectively. The DOJ Criminal Division is leading and coordinating efforts by a number of federal agencies and departments investigating such issues, any of which might later make their own requests for information. Acadia has also received a subpoena from the SEC requesting similar information. There could be additional requests made related to other facilities, including from state or local government entities.

# Xponential

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The Capitol Forum began reporting on Xponential Fitness, the franchisor of boutique fitness studio brands, in February 2023, exposing omissions of key information in the company's franchise disclosure documents and concerns from franchisees who said they felt duped into joining a flawed franchise system. The Capitol Forum's investigation and coverage eventually sparked interest from other financial news outlets, but only The Capitol Forum provided readers with deep insights into the ongoing legal and regulatory matters, as well monthly tracking of brand performance metrics and quarterly tracking of SBA loans to franchisees.

Until recently, Xponential had told investors that it had never had a franchised studio permanently close, but The Capitol Forum found that dozens of studios had in fact been closed for months or years. Franchisees who spoke to The Capitol Forum consistently said that Xponential insisted that following the company's "playbook" would make their studios profitable but that the company refused to consider the possibility that some studios had been built out in locations that could not drive membership levels to support their costs, or that emerging brands had not developed the reputation that would allow them to charge the high membership fees that formed the basis of the company's studio economics models. As a result, many franchisees struggled financially and as of October 2024, The Capitol Forum has tracked the total amount of losses sustained by the SBA to more than \$5 million.

As of November 2024, Xponential is under scrutiny from the Securities and Exchange Commission, the Department of Justice, the Federal Trade Commission and several state regulatory bodies. Among the allegations from franchisees are that the company kept the poor financial health of their franchise system from public view.



# Customers Bank

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Customers Bank, a subsidiary of Customers Bancorp, experienced rapid growth after absorbing the bulk of the crypto activity previously handled by Silvergate Bank and Signature Bank. The Capitol Forum found that many of the circumstances surrounding Customers Bank mirror solvency risk factors that were deemed to contribute to the 2023 demise of both banks. These risk factors included rapid growth, high concentration of crypto deposits and high amounts of uninsured and non-interest bearing deposits. Sources also told The Capitol Forum that the bank's concentration in crypto was likely far greater than indicated on the balance sheet.

The Capitol Forum reported to subscribers that the bank was the subject of a targeted exam by regulators at the Federal Reserve Bank of Philadelphia weeks before the regulator announced an enforcement action against the bank. As The Capitol Forum had reported, the regulator was concerned about compliance with anti-money laundering laws and the Bank Secrecy Act.

After Customers Bank hired a new chief compliance officer, whose previous role in anti-money laundering at TD Bank coincided with that bank's alleged facilitation of money laundering by drug cartels, The Capitol Forum spoke to several experts regarding the hire choice to explore whether it was a risky move that might send the wrong signals about the bank's commitment to regulatory compliance.



# Signet Jewelers

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In December of 2015, The Capitol Forum began investigating Signet Jewelers, raising questions about the company's accounting practices. Over the course of the following year, we continued examining the company's use of recency accounting and the implications for the company's receivables portfolio, as well as consumer complaints and how certain practices raised the prospect of a CFPB enforcement action.

Ultimately, the problems the Capitol Forum identified with the company's loan book came to fruition, with the company announcing in May of 2017 the first phase of the strategic outsourcing of its in-house credit program by selling a portion of its accounts receivable to Alliance Data Systems.

In addition, the company disclosed on September 6, 2017, that the CFPB notified it that the Bureau's Office of Enforcement was considering recommending that the CFPB take legal action against the company, alleging violations of the Consumer Financial Protection Act and Truth in Lending Act, relating to its in-store credit practices, promotions, and payment protection products. The company also disclosed that the NYAG was investigating similar issues under its jurisdiction.



# Stamps.com

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In July of 2016, The Capitol Forum started its investigation into Stamps.com, highlighting how the company relied on potentially improper relationships with postage resellers for a significant portion of its revenue. The Capitol Forum developed numerous industry contacts who confirmed The Capitol Forum's reporting and worked with industry experts to demonstrate exactly how much additional money Stamps.com was making by abusing the reseller program.

The Capitol Forum's work prompted the USPS Office of Inspector General to initiate an investigation into the postage reseller program, which eventually grew into three investigations. While the USPS sought to keep the OIG's findings from the public, The Capitol Forum broke the news that the USPS was losing up to \$1 billion annually because of problems highlighted in our reporting. USPS ultimately ended the postage reseller program entirely.



# FleetCor

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On March 1, 2017, The Capitol Forum wrote its first article about FleetCor's improper billing practices, raising questions about the legitimacy of its fee-based income.

The Capitol Forum continued to investigate the ways in which FleetCor used various means to impose hidden fees on unsuspecting customers, speaking with numerous customers and former employees and obtaining company documents.

In late 2019, the company disclosed that in October of 2017, it received a civil investigative demand from the FTC, relating to the company's advertising and marketing practices.

In December of 2019, The FTC sued FleetCor and its CEO Ronald Clarke, alleging that the company charged customers at least hundreds of millions of dollars in hidden fees after making false promises about helping customers save on fuel costs.



# InnovAge

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On March 29, 2021, The Capitol Forum highlighted quality of care concerns at the company's Program of All-Inclusive Care for the Elderly facilities. The Capitol Forum spoke with current and former employees, including nurses and doctors of the company, and received internal emails that detailed years of delayed medical care for some of the company's neediest patients.

In response to The Capitol Forum's reporting, Colorado regulators, in coordination with CMS, conducted surprise audits of the company's Colorado and Sacramento facilities in May of 2021.

In December of 2021, CMS and Colorado halted all Medicare and Medicaid enrollments at many of company's facilities across the country. There are also additional ongoing investigations by state attorneys general and the Department of Justice regarding potential False Claims Act violations.

# Health Insurance Innovations

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In December of 2017, The Capitol Forum began reporting about how third-party call centers with close relationships with Health Insurance Innovations were making misleading statements about what was and was not covered by short-term health insurance policies.

In November of 2018, the FTC obtained a temporary restraining order shutting down a Florida-based call center operation that worked with Health Insurance Innovations. The FTC alleged that the operation collected more than \$100 million by preying on Americans who were searching for health insurance and sold them worthless plans that left them uninsured, causing them to incur significant medical expenses or forgo critically needed care.

In 2022, the owner of that call center, as well as two executives, were also charged with one count of conspiracy to commit mail and wire fraud, four counts of mail fraud, and eight counts of wire fraud.

In August of 2022, the FTC sued the company's CEO and former vice president of sales for lying to consumers and required the company to pay \$100 million in refunds and prohibit the company from lying about its products or charging illegal fees.



# Penumbra

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In August of 2020, The Capitol Forum began reporting that Penumbra's Jet 7 XTRA Flex Catheter was susceptible to malfunction, risking injury or patient death. The Capitol Forum continued reporting about device malfunctions, speaking with numerous doctors who were frustrated by the company's messaging around device malfunctions, which sought to minimize company responsibility and instead blame doctors for misuse.

The Capitol Forum proactively tracked injuries and deaths resulting from the Jet 7 XTRA Flex Catheter, indicating that the company's current approach was insufficient and that a recall was necessary.

Ultimately, in December of 2020, the company recalled the device at the request of the FDA.

# TransDigm

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In January of 2017, The Capitol Forum began its investigation into TransDigm, highlighting how the company's private equity like business model resulted in price increases on the Department of Defense for spare aircraft parts. During the course of its investigation, The Capitol Forum found that the company was not only simply raising prices on the government, but also using strategies to bend current contracting rules in order to justify those increases, including submitting commercial receipts and breaking up contracts so as not to trigger mandatory cost reporting requirements.

In response to The Capitol Forum's work, members of Congress called for the DoD OIG to launch an investigation into the company. In February of 2019, the DoD OIG released an audit finding that the company earned "Excessive Profits" on 99% of the contracts it reviewed.

After the DoD OIG's audit, the House Oversight Committee launched its own investigation in April of 2019, resulting in a Congressional Hearing in May of 2019. Another DOD OIG investigation, as well as another oversight hearing, were performed, resulting in some changes to contracting law.



# Business Risk Examples

In some cases, The Capitol Forum is early in identifying business risks by revealing how companies may be operating in ways that the general market does not understand. Below are a few examples of where The Capitol Forum uncovered business risk for certain companies.



# InMode

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In late 2022, former sales representatives at InMode, a manufacturer of aesthetic medical devices, admitted to The Capitol Forum when selling the company's devices to customers they knew they were promoting unrealistic earning potentials and omitting information about the licenses required to operate the devices. Among the claims were that sales teams used high-pressure, urgency tactics to get customers to quickly purchase and agree to financing, and that often practices were left with crippling loans and sales far below expectations.

Further investigation of the device financing revealed a close relationship between InMode and its preferred finance partner, Financial Partners Group, along with numerous concerns of predatory lending practices. Former sales representatives claimed to be incentivized to push financing because they, and their managers, received a commission on each loan they originated through the broker. Doctors and estheticians who spoke to The Capitol Forum said they were pressured towards high-interest loans with terms that were not adequately disclosed—often resulting in interest rates that were far higher than expected.

Moreover, a review of numerous lawsuits pointed to knowledge by InMode of device failures and injuries which were not yet reported to the FDA. A review of the MAUDE database revealed no reports until February 2023, despite lawsuits and complaints to the company in 2021—a clear violation of the 30-day mandatory reporting period. Although InMode advertised its products as “minimally-invasive”, several products penetrate the skin and have resulted in complaints from consumers about damage and burns to their skin, sometimes requiring surgery to address. As issues of InMode devices became more rampant, The Capitol Forum received reports that InMode was threatening some customers with legal action and in other instances offering to replace defective products in exchange for signing of a confidentiality agreement with non-disparagement clauses.



The Capitol Forum then uncovered several additional potential FDA violations. Among these were that InMode appeared to be promoting several of its devices for medical uses beyond what the FDA granted them approval for, and using language in promotional materials that was cause for concern due to a previous FDA warning letter on a similar device. The Capitol Forum also reported that one of InMode's key growth products did not have FDA approval. A short time later, InMode removed this product as a standalone device from its US website.

In October 2023, pricing information was obtained which raised questions regarding statements to investors that the company's high gross margins were achieved by high, undiscounted pricing of its devices. In documents obtained by The Capitol Forum, it was found that pricing was inconsistent and highly discounted, sometimes based on the customer's financing approval.

# Beauty Health Company

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The Beauty Health Company (SKIN), a vendor of skincare devices and products assured investors that its consumables, which make up 46% of net sales, were sold solely and exclusively by their Hydrafacial brand. However, The Capitol Forum's investigation found the serums were easy to replicate, much lower in cost and that 25% of the providers interviewed admitted to using third-party serums, mostly due to significantly lower costs.

In an effort to block the use of generic serums, The Beauty Health Company developed a new machine, Syndeo, that was designed to only work with company-supplied products. The manufacture and sale of those devices, however, was fraught with problems, which were detailed exclusively in The Capitol Forum's coverage. Our coverage recounted the difficulties that machine users were having, including ongoing downtime from machine defects and the need for repeated replacements. Sales reps told The Capitol Forum that rollout of the device was rushed and haphazard. The company has since acknowledged the severe problems with the device, writing down \$65.2 million in Syndeo inventory for fiscal year 2023.

Continued investigation by The Capitol Forum uncovered additional threats to the company's growth, including the emergence of a new competitor backed by the former, ousted CEO and complaints of the new machines malfunctioning at high rates. Discussions of the faulty machines made their way to a Facebook group, which quickly expanded into discussions of pricing, competition and sourcing of generic serums. The Beauty Health Company was eventually successful in getting the group taken down on grounds of trademark infringement. Former employees told The Capitol Forum that the launch of the new machines was rushed and appeared to be in attempt to cover revenue gaps from consumables.



# Chegg

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In June of 2019, The Capitol Forum began highlighting how Chegg, which bills itself as a EdTech platform, was instead a marketplace for cheating students, connecting them with gig workers in India who will answer their questions for them. The Capitol Forum built a tool to scrape questions posed to the company's Q&A service, which served as a proxy for the company's overall financial health.

During the pandemic, as schools switched to remote learning, use of the Q&A service skyrocketed along with the company's stock price. The Capitol Forum extensively reported that much of that surge was attributable to students cheating on remotely proctored exams, with dozens and dozens of schools reporting massive cheating scandals involving Chegg.

Over time, it became clear that as students returned to school and teacher's awareness about cheating on Chegg increased, students were less likely to use the company's offerings. Sure enough, the pandemic boom proved to be unsustainable, despite what management had told investors, prompting securities lawsuits.

# The RealReal

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In August of 2019, The Capitol Forum began reporting on the luxury fashion reseller The RealReal, which purported to authentic all goods sold on its platform. However, through interviews with dozens of current and former employees, The Capitol Forum learned that the bulk of authentication of luxury goods was being performed by minimum wage workers with little to no training in luxury authentication.

The Capitol Forum learned that these workers had quotas of hundreds of handbags, dresses, and shoes that they had to “authenticate” every day, leading to counterfeit items on a platform entirely devoted to selling authentic goods.

The misrepresentations by The RealReal of its authentication practices prompted securities lawsuits as well as changes in the company’s marketing practices.

The Capitol Forum’s investigative team also can conduct investigations into a company’s business practices after it discloses governmental interest in certain business practices. In those cases, The Capitol Forum’s work can be instrumental in helping law firms craft securities complaints.



# Eargo

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On September 16, 2021, The Capitol Forum wrote an article about how Blue Cross Blue Shield Federal Employee Health Benefits Program—the largest provider of health benefits to federal employees—did not cover over-the-counter hearing aids.

Eargo, a hearing aid manufacturer, specifically identified the Blue Cross plan as one that includes reimbursement for hearing aids on its webpage. In addition, the website provided instructions to customers regarding the information they needed to provide to their local BCBS plans to help the local plan locate Eargo in the provider directory to facilitate BCBS approval of coverage for Eargo's products.

Eargo had previously disclosed that it was subject to a claims audit with its largest third-party payer, who accounted for 57% of the company's gross accounts receivable as of March 31, 2021.

Eargo disclosed that on September 21, 2021, it was informed that it was the target of a criminal investigation by the DOJ related to insurance reimbursement claims the company had submitted on behalf of its customers covered by federal employee health plans.



# Post-Subpoena Examples

Even when The Capitol Forum is not necessarily first to identify legal, regulatory, or business risk, The Capitol Forum does, in some cases, conduct investigations after a company discloses that it has received a subpoena or civil investigative demand. The Capitol Forum's work in these situations has been used by law firms as they craft their securities lawsuits.



# Oak Street Health

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In the fall of 2021, Oak Street Health, an operator of primary care clinics for Medicare Advantage beneficiaries, disclosed that it had received a civil investigative demand from the Department of Justice. According to the company, the DOJ was investigating whether Oak Street Health may have violated the False Claims Act and had requested certain documents relating to the company's relationship with third-party marketing agents as well as the provision of free transportation.

Through interviews with dozens of current and former employees, The Capitol Forum identified several practices by the company that likely triggered the investigation, including a program that paid \$200 to insurance agents for each referral they made to the program, something that former US Attorneys told The Capitol Forum was a clear violation of the Antikickback Statute.

The Capitol Forum also identified diagnosing practices that would have led to the Medicare Advantage program paying the company for illnesses that may not have existed, which would also violate the False Claims Act. This work was used by securities firms who brought a case against Oak Street Health.

# iRhythm

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Cardiac monitoring company iRhythm Technologies disclosed that in April of 2023 it received a subpoena from the Department of Justice's Bureau of Consumer Protection. Two months later, the FDA issued a lengthy warning letter to the company about the marketing of its Zio AT System as a real-time monitoring device for high-risk patients, known as a Mobile Cardiac Telemetry (MCT) device.

The FDA warning letter indicated that several technical limitations, such as a 500-alert limit, precluded the Zio AT from being labeled as an MCT; by marketing the device as an MCT, the company was able to bill Medicare at a much higher rate.

To mollify the FDA, iRhythm sent an advisory notice to cardiologists about the device's technical limitations among other steps. However, former iRhythm employees told Capitol Forum journalists that they felt the company misled both them and doctors about the problems with the Zio AT, noting, for example, that the advisory was to be given to office staff rather than doctors. Cardiac technicians also told Capitol Forum journalists that they had concerns regarding the accuracy of final reports that were given to doctors.

In the course of its investigation, The Capitol Forum also analyzed injuries, malfunctions, and deaths in the FDA's Manufacturer and User Facility Device Experience (MAUDE) database, keeping subscribers abreast of the cadence and types of complaints the company was receiving about its devices. That surveillance found that iRhythm patients were suffering injuries and deaths because of missed arrhythmias at a much higher rate than competitors selling true MCTs.

Moreover, The Capitol Forum's ongoing surveillance of the MAUDE database found that doctors were continuing to prescribe the Zio AT as if it were an MCT, indicating that the company's efforts to notify doctors were indeed insufficient.



The Capitol Forum also monitored legal proceedings, including first reporting about the DOJ's petition to enforce its administrative subpoena, which provided insight into the DOJ's investigation into the company.

Most recently, iRhythm disclosed violations during a July inspection of two of its facilities, but did not detail the extent or severity of those violations. The Capitol Forum was able to obtain a copy of the FDA's report soon after the disclosure, which detailed significant problems that the FDA had with the company's response to the Zio AT issue and confirmed The Capitol Forum's prior reporting regarding the concerns of cardiac technicians and other former employees.

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